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CHAPTER 1

STRUCTURE AND ORGANIZATION OF STATE AGENCIES

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Part 1
Public Service Commission

69-1-101. Definition of commission. As used in this title, the term "commission" means the public service commission provided for in 2-15-2602.

History: En. by Code Commissioner, 1979.

69-1-102. Creation of public service commission. A public service commission is hereby created, whose duty it is to supervise and regulate the operations of public utilities, common carriers, railroads, and other regulated industries listed in this title. Such supervision and regulation shall be in conformity with this title.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part); amd. Sec. 1, Ch. 43, L. 1979.

Cross-References

Commission as head of Department of Public Service Regulation, 2-15-2601.

Creation of Public Service Commission, 2-15-2602.

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

Regulation of utilities, Title 69, ch. 3.

Supervision and regulation of motor carriers, 69-12-201.

Regulation of railroads, Title 69, ch. 14.

69-1-103. Composition of commission. The commission shall consist of five members, who shall be qualified electors of the district from which they are elected, with each such member elected from a separate district of the state.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

Cross-References

Composition of Public Service Commission, 2-15-2602.

69-1-104. Public service commission districts. In this state there are five public service commission districts, with one commissioner elected from each district, distributed as follows:

(1) first district: Blaine, Chouteau, Daniels, Dawson, Fergus, Garfield, Glacier, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Prairie, Richland, Roosevelt, Sheridan, Toole, Valley, and Wibaux Counties;

(2) second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Rosebud, Stillwater, Sweet Grass, Treasure, and Yellowstone Counties;

(3) third district: Broadwater, Cascade, Jefferson, Judith Basin, Lewis and Clark, Meagher, Teton, and Wheatland Counties;

(4) fourth district: Beaverhead, Deer Lodge, Gallatin, Granite, Madison, Park, Powell, Ravalli, and Silver Bow Counties;

(5) fifth district: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders Counties.

History: En. 70-101.1 by Sec. 2, Ch. 339, L. 1974; R.C.M. 1947, 70-101.1.

69-1-105. Term of office — term limits. (1) A term is for a period of 4 years. A commissioner when elected shall qualify at the time and in the manner provided by law for other state officers and shall take office on the first Monday of January after the election.

(2) A commissioner shall serve until a successor is elected and qualified.

(3) The secretary of state or other authorized official may not certify a candidate's nomination or election to the public service commission or print or cause to be printed on any ballot the name of a candidate for the public service commission if, at the end of the current term of that office, the candidate will have served in that office or, had the candidate not resigned or been recalled, would have served in that office for 8 or more years in a 16-year period.

(4) When computing the time served for the purposes of subsection (3), the provisions of subsection (3) do not apply to time served in terms that ended during or prior to January 1995.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part); amd. Sec. 1, Ch. 271, L. 1995.

Cross-References

Limitation on terms of office, Art. IV, sec. 8, Mont. Const.

Term of office, 2-15-2602.

69-1-106. Vacancies. Any vacancy occurring in the commission shall be filled by appointment by the governor. Such appointee shall hold office until the next general election and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the commission, there shall be elected one member to fill out the unexpired term for which such vacancy exists.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

Cross-References

Vacancy in Executive Branch office, Art. VI, sec. 6 and 14, Mont. Const.; Title 2, ch. 16, part 5.

Powers and duties of Governor, 2-15-201.

69-1-107. Chairman of commission. A chairman shall be selected by the commission from its membership at the first meeting of each year after a general election.

History: **En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).**

Cross-References

Commission as head of Department of Public Service Regulation, 2-15-2601.

69-1-108. Secretary of commission. (1) The commission shall, immediately after its members have qualified, appoint a secretary to serve during the pleasure of the commission. The secretary shall be a qualified elector of the state.

(2) The secretary shall:

(a) keep a full and complete record of all proceedings of the commission;

(b) be the custodian of its records and file and preserve at the office of the commission all books, maps, documents, and papers entrusted to his care and be responsible to the commission for the same; and

(c) perform such other duties as the commission may prescribe.

History: **(1)En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R.C.M. 1921; rep. in part by Ch. 176, L. 1931; re-en. Sec. 3783, R.C.M. 1935; Sec. 72-105, R.C.M. 1947; (2)En. Sec. 9, Ch. 37, L. 1907; Sec. 4371, Rev. C. 1907; re-en. Sec. 3790, R.C.M. 1921; re-en. Sec. 3790, R.C.M. 1935; Sec. 72-112, R.C.M. 1947; R.C.M. 1947, 72-105(part), 72-112; amd. Sec. 2, Ch. 43, L. 1979.**

69-1-109. Employment of personnel. The commission shall also have the power to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said commission to the proper performance of its duties.

History: **En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R.C.M. 1921; rep. in part by Ch. 176, L. 1931; re-en. Sec. 3783, R.C.M. 1935; R.C.M. 1947, 72-105(part).**

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

69-1-110. Conduct of commission business. (1) The commission shall hold sessions at times and places in this state as may be expedient. A majority of the commission constitutes a quorum for the transaction of business.

(2) The members of the commission may administer oaths and affirmations.

(3) The commission may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings concerning railroad companies and other parties before it in the establishment of rates, orders, charges, and other acts required of it under the law.

History: **En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907; re-en. Sec. 3781, R.C.M. 1921; re-en. Sec. 3781, R.C.M. 1935; amd. Sec. 10, Ch. 315, L. 1974; R.C.M. 1947, 72-103.**

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Investigations by Public Service Commission, 69-2-102.

69-1-111. Reimbursement for expenses. The commission, secretary, and such clerks, experts, and persons as may be employed shall be entitled to receive from the state their expenses while traveling on the business of the commission, as provided for in 2-18-501 through 2-18-503. Such expenditure shall be sworn to by the person who incurred the expenses and be approved by the chairman of the commission or his designee.

History: **Ap. p. Sec. 32, Ch. 52, L. 1913; re-en. Sec. 3912, R.C.M. 1921; re-en. Sec. 3912, R.C.M. 1935; amd. Sec. 47, Ch. 439, L. 1975; amd. Sec. 1, Ch. 205, L. 1977; Sec. 70-134, R.C.M. 1947; Ap. p. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907; re-en. Sec. 3785, R.C.M. 1921; re-en. Sec. 3785, R.C.M. 1935; amd. Sec. 11, Ch. 315, L. 1974; amd. Sec. 49, Ch. 439, L. 1975; Sec. 72-107, R.C.M. 1947; R.C.M. 1947, 70-134, 72-107.**

69-1-112. Prohibition on acceptance of favors from railroads. (1) A public service commissioner or the secretary may not, directly or indirectly, solicit or request from or recommend to any railroad corporation or any officer, attorney, or agent thereof the appointment of any person to any place or position; nor shall any railroad corporation or its attorney or agent offer any place, appointment, or position or other consideration to such commissioners or to any clerks or employees of the commission; neither shall the commissioners or their secretary, clerks, agents, employees, or experts accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation.

(2) The request or acceptance by them, except as herein specified, of any such place or position, pass, present, gift, or other gratuity shall work a forfeiture of the office of the commissioner, secretary, clerk, agent, employee, or expert requesting or accepting the same. Any person violating any of the provisions of this section is guilty of a misdemeanor.

History: **En. Sec. 31, Ch. 37, L. 1907; Sec. 4394, Rev. C. 1907; re-en. Sec. 3813, R.C.M. 1921; re-en. Sec. 3813, R.C.M. 1935; amd. Sec. 14, Ch. 315, L. 1974; R.C.M. 1947, 72-136.**

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Governmental code of fair practices, Title 49, ch. 3.

69-1-113. Removal or suspension of commissioner. If any commissioner fails to perform his duties as provided in this title, he may be removed from office as provided by 45-7-401. Upon complaint made and good cause shown, the governor may suspend any commissioner, and if, in his judgment the exigencies of the case require, the governor may appoint temporarily some competent person to perform the duties of the suspended commissioner during the period of the suspension.

History: **En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R.C.M. 1921; re-en. Sec. 3816, R.C.M. 1935; R.C.M. 1947, 72-139(part); amd. Sec. 3, Ch. 43, L. 1979.**

Cross-References

Governmental code of fair practices, Title 49, ch. 3.

69-1-114. Fees. Each fee charged by the commission must be commensurate with the costs incurred in administering the function for which the fee is charged except those fees set by federal statute. No fee set by the commission may exceed $500.

History: **En. Sec. 3, Ch. 588, L. 1983.**

Cross-References

Fees to be charged by Commission, 69-3-204.

Part 2

Consumer Committee and Consumer Counsel

Part Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 5, ch. 15, part 2.

Penalties for violation of this part, 69-2-205.

69-1-201. Definitions. As used in this part and part 2 of chapter 2, the following definitions apply:

(1) "Committee" means the legislative consumer committee provided for in Title 5, chapter 15, part 1.

(2) "Consumer counsel" means the consumer counsel provided for in Title 5, chapter 15, part 2.

(3) "Regulated companies" means all those organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation or the public service commission or any successor agency.

History: Ap. p. Sec. 2, Ch. 65, L. 1973; Sec. 70-702, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 70-702(part).

69-1-202 through 69-1-210 reserved.

69-1-211. Meetings of committee. The committee shall meet at least once each quarter to advise and consult with the consumer counsel.

History: En. Sec. 4, Ch. 65, L. 1973; amd. Sec. 1, Ch. 341, L. 1974; amd. Sec. 7, Ch. 103, L. 1977; R.C.M. 1947, 70-704(part).

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-1-212. Compensation of committee members. Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. Sec. 4, Ch. 65, L. 1973; amd. Sec. 1, Ch. 341, L. 1974; amd. Sec. 7, Ch. 103, L. 1977; R.C.M. 1947, 70-704(part).

69-1-213 through 69-1-220 reserved.

69-1-221. Staff of consumer counsel. The consumer counsel may, with the approval of the committee, appoint employees and consultants necessary to carry out the provisions of this part and part 2 of chapter 2, within the limits of legislative appropriation.

History: En. Sec. 6, Ch. 65, L. 1973; R.C.M. 1947, 70-706.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

69-1-222. Annual report. The consumer counsel shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(7).

69-1-223. Funding of office of consumer counsel. (1) There is an account in the state special revenue fund to which all fees collected under this section must be deposited and from which all appropriations to the office of the consumer counsel must be paid. An appropriation to the office of the consumer counsel may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall:

(a) within 30 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement, in a form that the commission and department may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion of a quarter, separately stating gross revenue from sales to other regulated companies for resale; and

(b) at that time pay to the department of revenue a fee based on a percentage of the gross operating revenue reported, as determined by the department of revenue under 69-1-224.

(3) The amount of money which may be raised by the fee on the regulated companies during a fiscal year may not be increased, except as provided in 69-1-224(1)(c), from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the office of the consumer counsel must be obtained from other sources in a manner authorized by the legislature.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(1), (2); amd. Sec. 1, Ch. 280, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 647, L. 1987; amd. Sec. 1, Ch. 508, L. 1993.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

Fund structure, Title 17, ch. 2.

69-1-224. Determination of fee. (1) On or before August 31 of each year, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies for the previous fiscal year;

(b) compute the percentage, subject to revision as provided in subsection (2), of the amount determined in subsection (1)(a) that will produce an amount equal to the current appropriation to the office of the consumer counsel, except that a regulated company owned and operated by any municipal corporation within this state may not be required to pay a sum in excess of 0.06 of 1% of its gross operating revenue;

(c) adjust the percentage multiplier computed in subsection (1)(b) to ensure that sufficient funds are generated to meet the appropriation and that excess funds are not generated or retained by:

(i) determining the appropriation to the office of the consumer counsel for the previous fiscal year and comparing it to the fees collected from the previous fiscal year;

(ii) reducing or increasing the percentage determined in subsection (1)(b) for the current year in order to account for any difference determined in subsection (1)(c)(i); and

(iii) if necessary, reducing the revenue to be collected for the current year by any funds remaining unspent at the close of the prior fiscal year; and

(d) give notice by mail to each regulated company of the percentage to be applied to the gross operating revenue reported under 69-1-223(2) to determine the amount of the fee to be paid.

(2) (a) The department of revenue shall adjust the percentage multiplier if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in the actual gross operating revenue subject to the fee; or

(ii) submission and approval of a budget amendment authorizing the spending of money from a contingency appropriation included in the appropriation measure for the office of the consumer counsel and authorized to be raised by means of the fee.

(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated regulated companies.

(c) Regulated companies must be given at least 30 days' notice of any change in the percentage multiplier.

(d) Any change in the percentage multiplier is effective at the beginning of the next calendar quarter.

(3) In the event that the fee charged in 1 year is in excess of the amount actually expended in that year, the excess must be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money remaining unspent at the close of the fiscal year must be used to reduce the percentage calculated in subsection (1) in the subsequent fiscal year.

(4) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of the notice required by subsection (1), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(3), (4); amd. Sec. 2, Ch. 280, L. 1979; amd. Sec. 3, Ch. 647, L. 1987; amd. Sec. 2, Ch. 508, L. 1993; amd. Sec. 1, Ch. 117, L. 1995; amd. Sec. 257, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (3) substituted "subsection (1)" for "69-1-224"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

69-1-225. Computation and collection of fee in absence of statement — penalty and interest. (1) If a regulated company or an officer or employee of a regulated company fails, neglects, or refuses to file the statement required by 69-1-223(2), the department of revenue may after the time for filing has expired proceed to inform itself, as best it may, regarding the regulated company's gross operating revenue from all activities regulated by the commission within the state for the calendar quarter, quarters, or portion thereof and may determine and fix the amount of the consumer counsel fee due.

(2) (a) When a deficiency is determined and the fee becomes final, the department shall mail a notice and demand for payment to the regulated company. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest

until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(c) The taxpayer may seek review of the department's action pursuant to 15-1-211.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to file the statement is provided to the department.

History: En. Sec. 1, Ch. 195, L. 1979; amd. Secs. 8, 19, Ch. 676, L. 1991; amd. Sec. 27, Ch. 811, L. 1991.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

Penalties for violation, 69-2-205.

69-1-226. Failure to pay fee — penalty and interest — collection of fee. (1) If a regulated company or an officer or employee of a regulated company files the statement required by 69-1-223(2) but fails, neglects, or refuses to pay the fee due within the time required, the department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of the fee. Interest is computed from the date the fee is due to the date of payment.

(2) The department of revenue shall mail to the regulated company a notice, pursuant to 15-1-211, setting forth the amount of the fee, penalty, and interest. The taxpayer may seek review of the department's action pursuant to 15-1-211.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to make payment is provided to the department.

History: En. Sec. 2, Ch. 195, L. 1979; amd. Sec. 51, Ch. 439, L. 1981; amd. Sec. 9, Ch. 676, L. 1991; amd. Sec. 28, Ch. 811, L. 1991.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

Warrant for distraint, Title 15, ch. 1, part 7.

Penalties for violation, 69-2-205.

69-1-227. Warrant for distraint. If the fee imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded.

History: En. Sec. 3, Ch. 195, L. 1979; amd. Sec. 52, Ch. 439, L. 1981.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Liens, Title 71, ch. 3.

69-1-228. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: En. Sec. 11, Ch. 676, L. 1991.

69-1-229 reserved.

69-1-230. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

History: En. Sec. 15, Ch. 676, L. 1991.

Part 3 reserved

Part 4

Funding of Department of Public Service Regulation

69-1-401. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public service regulation provided for in Title 2, chapter 15, part 26.

(2) "Regulated companies" means all organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation, the public service commission, or any successor agency. The term does not include motor carriers regulated pursuant to Title 69, chapter 12.

History: En. Sec. 1, Ch. 32, Sp. L. June 1986.

69-1-402. Funding of the department of public service regulation. (1) All fees collected under this section must be deposited in an account in the state special revenue fund to the credit of the department. An appropriation to the department may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 30 days after the close of each calendar quarter, pay to the department of revenue a fee based on a percentage of gross operating revenue reported pursuant to 69-1-223(2)(a), as determined by the department of revenue under 69-1-403.

(3) The amount of money that may be raised by the fee on the regulated companies during a fiscal year may not be increased, except as provided in 69-1-224(1)(c), from the amount appropriated to the department by the legislature for that fiscal year, including both base and contingency appropriations. Any additional money required for operation of the department must be obtained from other sources in a manner authorized by the legislature.

History: En. Sec. 2, Ch. 32, Sp. L. June 1986; amd. Sec. 4, Ch. 647, L. 1987; amd. Sec. 3, Ch. 508, L. 1993.

69-1-403. Determination and collection of fee. (1) The fee provided for in 69-1-402 to be paid by regulated companies must be determined in the manner set forth in 69-1-224 for determining the consumer counsel fee, except that gross revenues from sales to other regulated companies for resale, as calculated by the public service commission, must be excluded from the determination of the total gross operating revenue pursuant to 69-1-224.

(2) The department of revenue shall give notice by mail to each regulated company of the percentage determined pursuant to 69-1-224 and this section to be applied to gross operating revenues reported under 69-1-223, excluding gross revenues from sales to other regulated companies for resale.

(3) The fee provided for in 69-1-402 may be computed and collected in the manner provided in 69-1-225 through 69-1-227.

(4) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of the notice

required by 69-1-224(1), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part.

History: En. Sec. 3, Ch. 32, Sp. L. June 1986; amd. Sec. 5, Ch. 647, L. 1987; amd. Sec. 4, Ch. 508, L. 1993.

69-1-404. Repealed. Sec. 56, Ch. 349, L. 1993.

History: En. Sec. 5, Ch. 32, Sp. L. June 1986; amd. Sec. 45, Ch. 112, L. 1991.

CHAPTER 2

GENERAL REGULATORY PROVISIONS

Part 1 — Role of Public Service Commission

69-2-101. Adoption of rules for rate cases.
69-2-102. Role of commission when consumer counsel protests.

Part 2 — Role of Consumer Counsel

69-2-201. Appearance at hearings by counsel.
69-2-202. Institution of and intervention in proceedings involving regulated companies.
69-2-203. Investigatory powers of counsel.
69-2-204. Representation of consuming public.
69-2-205. Violations.
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Chapter Cross-References

Sewer rates — complaint procedure, 7-13-4208.

Effect of local government utility services law — power and duties of Public Service Commission unaffected by water and sewer improvement districts, 7-13-4310.

Relocation of utilities' facilities, 60-4-402.

Part 1

Role of Public Service Commission

69-2-101. Adoption of rules for rate cases. The commission shall adopt such rules of practice and procedure for the filing, investigation, and hearing of petitions or applications to increase or decrease rates and charges of railroads, motor carriers, and public utilities as the commission finds necessary or appropriate to enable it to reach a final decision in an orderly manner.

History: En. 70-104.1 by Sec. 1, Ch. 137, L. 1977; R.C.M. 1947, 70-104.1.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Public transportation issues — Department of Transportation to represent state, 60-21-101.

69-2-102. Role of commission when consumer counsel protests. In any case involving an application by a regulated entity to the commission for authority to increase its rates which is actively contested by the consumer counsel, the commission shall leave representation of the interests of consumers to the consumer counsel when he timely petitions to become a party to such case. Nothing contained herein prohibits the commission or its staff from investigating and interrogating in any hearing to clarify the case or present an issue. Evidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address such issue and such counsel fails to introduce sufficient or adequate evidence.

History: En. 70-707.1 by Sec. 1, Ch. 474, L. 1977; R.C.M. 1947, 70-707.1.

Cross-References

Conduct of hearing, 69-3-326.

Immunity for witnesses, 69-3-329.

Part 2
Role of Consumer Counsel

Part Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 5, ch. 15, part 2.

69-2-201. Appearance at hearings by counsel. The consumer counsel may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence, and other matters.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(1).

Cross-References

Conduct of hearing, 69-3-326.

Immunity for witnesses, 69-3-329.

69-2-202. Institution of and intervention in proceedings involving regulated companies. (1) The consumer counsel may institute proceedings before the commission against regulated companies.

(2) The consumer counsel may institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the utility and transportation consuming public of the state of Montana or substantial elements thereof, including review of decisions rendered by or failure to act by the commission and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to 27-19-203.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(2), (5); amd. Sec. 4, Ch. 43, L. 1979.

Cross-References

Intervention, Rule 24, M.R.Civ.P. (see Title 25, ch. 20).

69-2-203. Investigatory powers of counsel. (1) The consumer counsel has all the investigatory powers necessary to perform his duties as provided herein and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act. It is the specific intent of this section to provide the authority and availability of the process of discovery to the consumer counsel in administrative contested-case procedure. Violations of discovery procedure shall be heard and administered by the district court. In the event of an appeal to district court for enforcement of discovery procedures, the time limits imposed by 69-3-302 and 69-3-303 shall be suspended pending order of the district court.

(2) The consumer counsel may examine in any commission proceedings, under oath, any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(3), (4).

Cross-References

Montana Administrative Procedure Act — contested cases — discovery, 2-4-602.

Montana Rules of Civil Procedure concerning discovery, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

69-2-204. Representation of consuming public. (1) The consumer counsel shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate.

(2) The consumer counsel has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee, in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(6), (8).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-2-205. Violations. (1) Any regulated company or any officer or employee of any regulated company who, with intent to evade any fee or any requirement of this part or part 2 of chapter 1 or any lawful requirement of the commission thereunder, fails to pay the fee, to make, render, sign, or verify any statement, or to supply any information, within the time required by or under the provisions of this part or part 2 of chapter 1, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent statement or supplies any false or fraudulent information:

(a) shall be liable to a penalty of not more than $1,000, to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction; and

(b) shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed $1,000 or be imprisoned in the county jail not to exceed 1 year or both, at the discretion of the court.

(2) The certificate of the department of revenue to the effect that a fee has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this part or part 2 of chapter 1, shall be prima facie evidence that such fee has not been paid, that such statement has not been filed, or that such information has not been supplied.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(5), (6).

Cross-References

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

69-2-206 through 69-2-210 reserved.

69-2-211. Notice to consumer counsel. In addition to all other forms of notice of hearings conducted by the commission provided for in this title, notices of all hearings shall be served upon the consumer counsel.

History: En. 70-710 by Sec. 1, Ch. 212, L. 1974; R.C.M. 1947, 70-710.

69-2-212. Notice to advise public of availability of consumer counsel. All forms of notice of public hearings conducted by the commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the consumer counsel and its availability to function on behalf of members of the consuming public.

History: En. 70-711 by Sec. 2, Ch. 212, L. 1974; R.C.M. 1947, 70-711.

CHAPTER 3

REGULATION OF UTILITIES

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Chapter Cross-References

Local government provisions not to modify this chapter, 7-3-4302.

Metropolitan sanitary district ratemaking, 7-13-144.

Effect of local government utility services law, 7-13-4310.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

Special assessment — telecommunications services for the handicapped, 53-19-311.

Relocation of utilities' facilities, 60-4-402.

Part 1
Role of Commission

69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;
(b) street-railway service;
(c) light;
(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) regulated telecommunications service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public;

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23; or

(c) a person exempted from regulation as a public utility as provided in 69-3-111.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R.C.M. 1921; re-en. Sec. 3881, R.C.M. 1935; R.C.M. 1947, 70-103(part); amd. Sec. 3, Ch. 631, L. 1979; amd. Sec. 8, Ch. 607, L. 1981; amd. Secs. 4, 5, Ch. 588, L. 1983; amd. Sec. 1, Ch. 195, L. 1985; amd. Sec. 11, Ch. 546, L. 1985.

Cross-References

Effect of local government utility services law, 7-13-4310.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

Utility defined, 60-4-401, 75-20-104.

Records of public utilities, 69-3-202.

Montana Telecommunications Act, Title 69, ch. 3, part 8.

69-3-102. Supervision and regulation of public utilities. The commission is hereby invested with full power of supervision, regulation, and control of such public utilities, subject to the provisions of this chapter and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R.C.M. 1921; re-en. Sec. 3881, R.C.M. 1935; R.C.M. 1947, 70-103(part).

Cross-References

Effect of local government utility services law, 7-13-4310.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-3-103. General powers and rulemaking authority of commission. (1) In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure and to do all things necessary and convenient in the exercise of the powers conferred by this chapter upon the commission; provided that nothing in this chapter shall be construed as vesting judicial powers on said commission or as denying to any person, firm, association, corporation, municipality, county, town, or village the right to test in a court of competent jurisdiction the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

(2) The commission shall have the power to:

(a) adopt reasonable and proper rules relative to all inspections, tests, audits, and investigations;

(b) adopt and publish reasonable and proper rules to govern its proceedings; and

(c) regulate the mode and manner of all investigations and hearings of public utilities and other parties before it.

History: (1)En. Sec. 4, Ch. 52, L. 1913; re-en. Sec. 3882, R.C.M. 1921; re-en. Sec. 3882, R.C.M. 1935; Sec. 70-104, R.C.M. 1947; (2)En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894,

R.C.M. 1921; re-en. Sec. 3894, R.C.M. 1935; Sec. 70-116, R.C.M. 1947; R.C.M. 1947, 70-104, 70-116(part).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-104. Hearings to be open. All hearings shall be open to the public.

History: En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R.C.M. 1921; re-en. Sec. 3894, R.C.M. 1935; R.C.M. 1947, 70-116(part).

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-3-105. Access to commission records and reports — protective order. (1) Except as provided in subsection (2), the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission are open to the public at reasonable times, subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than 90 days after the acquisition of the facts or information.

(2) The commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, required to carry out its regulatory functions.

History: En. Sec. 9, Ch. 52, L. 1913; re-en. Sec. 3889, R.C.M. 1921; re-en. Sec. 3889, R.C.M. 1935; amd. Sec. 29, Ch. 93, L. 1969; amd. Sec. 7, Ch. 315, L. 1974; R.C.M. 1947, 70-111; amd. Sec. 1, Ch. 77, L. 1987.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Public records, Title 2, ch. 6.

69-3-106. Supervision of management of public utilities. (1) The commission shall have authority to inquire into the management of the business of all public utilities, shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

(2) The commission, any commissioner, or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person, other than one of said commissioners, who shall make such demand shall produce his authority to make such inspection.

(3) The commission may require by order or subpoena, to be served on any public utility in the same manner that a summons is served in a civil action in the district court, the production, within this state and at such time and place as it may designate, of any books, accounts, papers, or records kept by such public utility in any office or place without the state or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction. Any public utility failing

or refusing to comply with any such order or subpoena shall be subject to the liability named in 69-3-206.

History: En. Sec. 15, Ch. 52, L. 1913; re-en. Sec. 3895, R.C.M. 1921; re-en. Sec. 3895, R.C.M. 1935; R.C.M. 1947, 70-117.

Cross-References

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

Effect of noncooperation or noncompliance with Public Service Commission orders, 69-3-206, 69-3-208.

69-3-107. Investigation and reports of accidents. (1) The commission, some member thereof, or some person deputed by it shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state resulting in death or injury to any person of such gravity as to require 3 days or more of hospitalization. The report of the accident shall be filed in the office of the commission.

(2) It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident in the public utility's operation and resulting in death or injury to any person of such gravity as to require hospitalization, to report the accident within the next 2 business days, followed by written report in which shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. For any other accident occurring in a public utility's operation and resulting in injury, a public utility shall submit a written report to the commission within the 20 days after the occurrence of the accident. The commission shall prescribe forms for the purpose of making such written reports.

History: En. Sec. 27, Ch. 52, L. 1913; re-en. Sec. 3907, R.C.M. 1921; re-en. Sec. 3907, R.C.M. 1935; amd. Sec. 1, Ch. 472, L. 1977; R.C.M. 1947, 70-129.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Subpoena of witnesses, 69-3-327, 69-14-113.

69-3-108. Standards for and examinations of products and services. (1) The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service. These are lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility and establish reasonable standards for examination and testing of the product or service and for the measurement of the product or service.

(3) The commission shall provide for the examination and testing of appliances used for the measuring of any product or service of a public utility. A consumer or user may have appliances tested upon payment of the fees fixed by the commission. The commission shall establish reasonable fees to be paid for testing appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of the request. These fees must be paid by the public utility and repaid to the complaining party if the quality or quantity of the product or the character of the service is found by the commission defective or insufficient in a degree to justify the demand for

testing, or the commission may apportion the fees between the parties as justice may require.

(4) The commission may, in its discretion, purchase materials, apparatus, and standard measuring instruments for examinations and tests as it considers necessary.

(5) The commission or its agents, experts, or examiners may enter upon any premises occupied by a public utility for the purpose of making the examinations and tests provided in this chapter and set up and use on the premises any apparatus and appliances and occupy reasonable space for the examinations and tests. A public utility refusing to allow examinations to be made, as provided in this chapter, is subject to the penalties prescribed in 69-3-206.

(6) The standards and fees established by the commission pursuant to this section must be established through administrative rules or ordered tariff provisions, in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 10, Ch. 52, L. 1913; re-en. Sec. 3890, R.C.M. 1921; re-en. Sec. 3890, R.C.M. 1935; R.C.M. 1947, 70-112; amd. Sec. 1, Ch. 117, L. 1993.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-109. Ascertaining property values. The commission may, in its discretion, investigate and ascertain the value of the property of each public utility actually used and useful for the convenience of the public. The commission is not bound to accept or use any particular value in determining rates. However, if any value is used, the value may not exceed the original cost of the property, except that the commission may include all or some of an acquisition adjustment for certain property purchased by a public utility in the purchasing utility's rate base if the transfer of the property to the purchasing utility is in the public interest. In making the investigation, the commission may avail itself of all information contained in the assessment rolls of various counties or in the public records of the various branches of the state government or of any other information obtainable, and the commission may at any time on its own initiative make a revaluation of the property.

History: En. Sec. 6, Ch. 52, L. 1913; re-en. Sec. 3884, R.C.M. 1921; re-en. Sec. 3884, R.C.M. 1935; amd. Sec. 1, Ch. 28, L. 1975; R.C.M. 1947, 70-106; amd. Sec. 1, Ch. 373, L. 1995.

Cross-References

Assessment of public utilities in one county, 15-8-406.

Properties centrally assessed, 15-23-101.

Montana Major Facility Siting Act, Title 75, ch. 20.

69-3-110. Enforcement of public utility law. (1) The commission shall inquire into any neglect or violation of the laws of this state by any public utility, as hereinbefore defined, doing business in this state or by the officers, agents, or employees thereof. The commission shall enforce the provisions of this chapter and report all violations thereof to the attorney general.

(2) All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced and are prima facie lawful from the date of the order until changed or modified by the commission or in pursuance of part 4. All rules, practices, and services prescribed by the commission shall be enforced

and enforcement actions shall be brought pursuant to the provisions of part 4 until the rules, practices, or services are changed or modified by the commission upon a satisfactory showing being made.

(3) Upon the request of the commission, it is the duty of the attorney general or the prosecuting attorney of any county to aid in any investigation, prosecution, hearing, or trial had under the provisions of this chapter and to institute and prosecute all actions or proceedings necessary for the enforcement of this chapter.

(4) Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state in the district court of any county having jurisdiction of the defendant. The attorney general shall be the counsel in any proceeding, investigation, hearing, or trial prosecuted or defended by the commission, as also shall any prosecuting attorney selected by the commission or other special counsel furnished the commission in any county where such action is pending.

(5) In addition to the other remedies provided by this chapter for the prevention and punishment of any violation of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this chapter and of the orders of the commission by proceedings in mandamus, by injunction, or by other civil remedies.

History: En. Secs. 24, 25, 30, 31, Ch. 52, L. 1913; re-en. Secs. 3904, 3905, 3910, 3911, R.C.M. 1921; re-en. Secs. 3904, 3905, 3910, 3911, R.C.M. 1935; R.C.M. 1947, 70-126, 70-127, 70-132, 70-133; amd. Sec. 5, Ch. 43, L. 1979.

Cross-References

Attorney General, Title 2, ch. 15, part 5.
County Attorney, Title 7, ch. 4, part 27.
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.
Penalties, 69-3-206, 69-3-207.
Injunctive relief, 69-3-403.
Judicial remedies, 69-5-111.

69-3-111. Persons with interest in property leased or to be sold to public utility — exemption. (1) Upon application, the commission, by order, may determine that any person not otherwise a public utility is not a public utility subject to the jurisdiction, control or regulation of the commission under this title, solely because such person owns or controls any plant or equipment, any part of or undivided interest in a plant or equipment or any water right described in 69-3-101:

(a) which is leased or sold or held for lease or sale to any public utility or other lessee; or

(b) the operation and use of which is vested by lease or other contract in a public utility or other lessee; or

(c) for a period of not more than 90 days after termination of any lease or contract described in subsection (1)(a) or (1)(b) or after such person gains possession of such property following a breach of such lease or contract.

(2) Any order once issued may not be revoked or modified by the commission unless there is a material change in the lease or contract terms forming the basis of such order.

(3) The commission may, upon application by a public utility, issue its order approving the terms of any lease or contract described in subsection (1)(a) or (1)(b) for the purpose of qualifying any party thereto for an exemption by

the United States securities and exchange commission, or its successor, from the federal Public Utility Holding Company Act of 1935.

(4) A public utility, as lessee of any plant or equipment, any part of, or undivided interest in, a plant or equipment or any water right described in 69-3-101 which is subject to any lease or contract described in this section, shall comply with this title, regarding such plant, equipment, or water right.

(5) Nothing in this section may be construed to alter or modify the authority of the commission to regulate the rates and services of a public utility that is subject to the provisions of this title.

History: En. Sec. 2, Ch. 195, L. 1985.

Cross-References

Certificate of water right, 85-2-315.

Transfer of appropriation right, 85-2-403.

69-3-112. Evaluation of coal or other boiler fuel costs. (1) The purchases of coal or other boiler fuel for the generation of electricity by a public utility from a fuel supplier that is an affiliate of the public utility are subject to review by the commission to enable the commission to determine whether the costs incurred by the public utility are reasonable.

(2) In determining whether the costs incurred are reasonable, the commission shall compare the costs incurred by the public utility to the costs that the public utility would have incurred if the coal or other boiler fuel had been purchased from a different supplier under similar contract terms.

(3) The commission may disallow recovery in the rates charged by the public utility of any amount by which the costs incurred exceed the amount that the commission determines to be reasonable based on the comparison required under subsection (2).

(4) For the purposes of this section, the following definitions apply:

(a) "Affiliate" means a corporation or other entity wholly owned or controlled, directly or indirectly, by the public utility or by a corporation or other entity that wholly owns or controls, directly or indirectly, the public utility.

(b) "Different supplier" means a fuel supplier that is not an affiliate of the public utility that is subject to commission review under this section.

History: En. Secs. 1, 2, Ch. 166, L. 1995.

Part 2
Requirements for Public Utilities

69-3-201. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, or regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 5, Ch. 52, L. 1913; re-en. Sec. 3883, R.C.M. 1921; re-en. Sec. 3883, R.C.M. 1935; R.C.M. 1947, 70-105; amd. Sec. 12, Ch. 546, L. 1985.

Cross-References

Definition of public utility, 69-3-101.

Montana Telecommunications Act, Title 69, ch. 3, part 8.

69-3-202. Records of public utilities. (1) Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

(2) Every public utility engaged directly or indirectly in any other businesses than those mentioned in 69-3-101 shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other businesses, in which case all the provisions of this chapter shall apply with like force and effect to the books, accounts, papers, and records of such other businesses.

(3) The commission shall cause to be prepared suitable blanks for carrying out the purposes of this chapter and shall, when necessary, furnish such blanks to each public utility. No public utility shall keep any other books, accounts, papers, or records of the business transacted than those prescribed or approved by the commission.

(4) Each public utility shall have an office in one of the towns, villages, or cities in this state in which its property or some part thereof is located and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records required by the commission to be kept within the state shall at any time be removed from the state except upon such conditions as may be prescribed by the commission.

(5) Any commissioner or any person or persons authorized by the commission shall have the right to examine the books, accounts, records, and papers of any public utility for the purposes of determining their correctness and whether they are being kept in accordance with the rules and system prescribed by the commission.

History: (1) thru (4)En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3885, R.C.M. 1921; re-en. Sec. 3885, R.C.M. 1935; Sec. 70-107, R.C.M. 1947; (5)En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3887, R.C.M. 1921; re-en. Sec. 3887, R.C.M. 1935; Sec. 70-109, R.C.M. 1947; R.C.M. 1947, 70-107, 70-109.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-203. Annual report to commission. (1) The accounts of all public utilities must be closed annually on either June 30 or December 31. A balance sheet must be taken promptly from the accounts, and a full annual report of the business of the utility must be made to the commission not later than October 31 if the accounts are closed on June 30 and not later than April 30 if the accounts are closed on December 31.

(2) The reports must be in the form prescribed by the commission and must contain all the information that the commission considers necessary for the proper performance of its duties. The commission may at any time request information omitted from the reports or not provided for in the reports whenever, in the judgment of the commission, the information is necessary.

History: En. Sec. 7, Ch. 52, L. 1913; amd. Sec. 1, Ch. 186, L. 1919; re-en. Sec. 3886, R.C.M. 1921; amd. Sec. 1, Ch. 172, L. 1929; re-en. Sec. 3886, R.C.M. 1935; amd. Sec. 1, Ch. 160, L. 1945; amd. Sec. 1, Ch. 24, L. 1947; R.C.M. 1947, 70-108; amd. Sec. 1, Ch. 82, L. 1995.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-204. Fees to be charged by commission. (1) The public service commission may, except as otherwise provided by law, require and receive fees before filing annual reports, schedules, and supplements not provided by law to be furnished free of charge.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing notice as required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, schedules, and supplements of these which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; re-en. Sec. 3847.26, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974; amd. Sec. 5, Ch. 472, L. 1977; R.C.M. 1947, 8-126(part); amd. Sec. 6, Ch. 43, L. 1979; amd. Sec. 1, Ch. 500, L. 1979; amd. Sec. 6, Ch. 588, L. 1983.

Cross-References

Fees, 69-1-114.

69-3-205. Verification of reports and other papers. Every annual report, record, or statement required by this chapter to be made to the commission shall be sworn to by the proper officer, agent, or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record, or statement shall be deemed perjury, and the person making such false oath shall upon conviction be punished as in the case of other perjuries.

History: En. Sec. 29, Ch. 52, L. 1913; re-en. Sec. 3909, R.C.M. 1921; re-en. Sec. 3909, R.C.M. 1935; R.C.M. 1947, 70-131.

Cross-References

Perjury, 45-7-201.

69-3-206. Penalty for failure to make reports or permit examinations. (1) Any officer, agent, or person in charge of the books, accounts, records, and papers or any of them of any public utility who shall refuse or fail for a period of 30 days to furnish the commission with any report required by the provisions of this chapter and any officer, agent, or person in charge of any particular books, accounts, records, or papers relating to the business of such public utility who shall refuse to permit any commissioner or other person duly authorized by the commission to inspect such books, accounts, records, or papers on behalf of the commission shall be subject to a fine of not less than $100 or more than $1,000.

(2) Such fine shall be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction. Each day's refusal or failure on the part of such officer, agent, or person in charge shall be deemed a separate offense and be subject to the penalty herein prescribed.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R.C.M. 1921; re-en. Sec. 3888, R.C.M. 1935; amd. Sec. 1, Ch. 248, L. 1969; R.C.M. 1947, 70-110(part).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Supervision of management of public utilities, 69-3-106.

Standards for and examination of products and services, 69-3-108.

Deviations from scheduled rates, tolls, and charges, 69-3-305.

69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations. (1) A person violating any safety regulation or provision adopted under the Natural Gas Pipeline Safety Act of 1968, as amended, that applies to areas the commission has authority to enforce is subject to a fine of not less than $100 or more than $25,000. Each day in which a violation of a safety regulation or provision continues is considered a separate offense and is subject to the penalty prescribed in this subsection, except that the maximum fine may not exceed $500,000 for any related series of violations.

(2) In determining the amount of the penalty, the following must be considered: the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability; any history of prior violations; the effect on ability to continue to do business; any good faith in attempting to achieve compliance; ability to pay the penalty; and other matters as justice may require.

(3) The fine must be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction.

(4) The commission may prescribe rules necessary to effectively administer this section.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R.C.M. 1921; re-en. Sec. 3888, R.C.M. 1935; amd. Sec. 1, Ch. 248, L. 1969; R.C.M. 1947, 70-110(part); amd. Sec. 1, Ch. 170, L. 1985; amd. Sec. 1, Ch. 189, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Supervision of management of public utilities, 69-3-106.

Standards for and examination of products and services, 69-3-108.

Deviations from scheduled rates, tolls, and charges, 69-3-305.

69-3-208. Effect of failure by utility to cooperate with commission. Any officer, agent, or employee of any public utility shall be subject to the penalty prescribed in 69-3-206 whenever the officer, agent, or employee shall:

(1) willfully fail or refuse to fill out and return any blanks as required by this chapter;

(2) willfully fail or refuse to answer any questions therein propounded;

(3) knowingly or willfully give a false answer to any such questions or evade the answer to such questions, where the fact inquired of is within his knowledge; or

(4) upon proper demand, willfully fail or refuse to exhibit to any commission or any commissioners or any person also authorized to examine the same, any book, paper, or account of such public utility which is in his possession or under his control.

History: En. Sec. 23, Ch. 52, L. 1913; re-en. Sec. 3903, R.C.M. 1921; re-en. Sec. 3903, R.C.M. 1935; R.C.M. 1947, 70-125.

Cross-References

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

69-3-209. Violations of public utility laws or orders. If any public utility violates any provision of this chapter, does any act herein prohibited, or fails or refuses to perform any duty enjoined upon it, fails to place in operation any rate or joint rate, or fails, neglects, or refuses to obey any lawful requirement or order made by the commission or any court, then for every such violation, failure, or refusal the public utility is subject to the penalty prescribed by 69-3-206.

History: En. Sec. 28, Ch. 52, L. 1913; re-en. Sec. 3908, R.C.M. 1921; re-en. Sec. 3908, R.C.M. 1935; R.C.M. 1947, 70-130; amd. Sec. 7, Ch. 43, L. 1979.

69-3-210 through 69-3-220 reserved.

69-3-221. Public utility errors in billing customers. (1) For the purposes of this section:

(a) "public utility" does not include a municipal utility as defined in chapter 7 of this title;

(b) a "customer billing error":

(i) includes any bill issued by the utility that is not designated as an estimated bill and that understates the amount owed by the customer;

(ii) includes a utility's failure to bill a customer for service provided that would be billed to the customer under the utility's normal billing practices;

(iii) excludes errors that result from the theft of service by the customer;

(iv) excludes errors involving a utility's industrial class customers; and

(v) excludes errors incurred in the billing of long distance services by a telecommunications utility.

(2) Whenever a public utility discovers a customer billing error, the utility may submit a bill to the customer for a period not to exceed the 6 months preceding the date the billing error is discovered.

(3) The commission may adopt rules to implement subsections (1) and (2).

History: En. Secs. 1, 2, Ch. 587, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Utility services, Title 7, ch. 13.

Theft of services, 45-6-305.

Obtaining communication services with intent to defraud, 45-6-306.

Liability for bypassing or tampering with meter, Title 69, ch. 4, part 11.

Part 3
Ratemaking Procedures

69-3-301. Schedule of rates, tolls, and charges. (1) Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the state or for any service in connection therewith or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule all rules that in any manner affect the rates charged or to be charged for any service. When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission.

(2) A copy of so much of the schedule as the commission considers necessary for the use of the public shall be printed in plain type and kept on file in every station or office of the public utility where payments are made by

the consumers or users. Such copy shall be open to the public and in such form and place as to be readily accessible to the public and conveniently inspected.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 8, Ch. 43, L. 1979.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-3-302. Changes in schedules. (1) No change shall be made in any schedule, including schedules of joint rates, except as approved by the commission, upon the passage of 9 months, or by operation of 69-3-907(1). If the 9-month time period expires prior to commission approval of a schedule, a utility may waive the time period.

(2) Notwithstanding any provision of this title to the contrary and notwithstanding the existence of and authorization for the office of consumer counsel, the rates, tolls, or charges set forth in any schedule filed with the commission pursuant to 69-3-301 shall become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months after the date upon which the schedule was filed under the rules of practice and procedure for filing as adopted by the commission or upon commission approval, whichever shall occur first, unless the utility waives the 9-month time period. However, if the rates, tolls, or charges become effective because of the passage of 9 months' time, the revenues collected thereunder shall be subject to rebate, plus interest at a per-annum rate determined by the commission, to the extent that the rates, tolls, or charges ultimately approved by the commission in its final decision produce revenues which are less than those collected under the filed schedules. In the case of an investor-owned utility, the interest rate set by the commission may not exceed the cost of equity capital as last determined by the commission.

(3) The commission may prescribe rules necessary to effectively administer this section.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 1, Ch. 362, L. 1983; amd. Sec. 8, Ch. 254, L. 1987.

Cross-References

Investigatory powers of Consumer Counsel, 69-2-203.

69-3-303. Notice and hearing on proposed change. (1) Before it may approve any change increasing the rate or rates for utility service in a schedule generally affecting consumers in a utility's service area or before any change may become effective due to the passage of 9 months, the commission shall publish a notice of the proposed change, conforming to the requirements of 2-4-601 in one or more newspapers published and of general circulation within the area affected by the proposed change. This notice shall announce a hearing on the proposed change and shall inform interested persons how they may petition the commission to become parties to the hearing.

(2) The commission shall proceed to conduct the hearing under the Montana Administrative Procedure Act. The final decision of the commission in any matter decided after a hearing conducted pursuant to this section shall

conform to the requirements of a decision in a contested case under the Montana Administrative Procedure Act.

(3) The consumer counsel may in his discretion petition to become a party to the hearing.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part).

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Montana Administrative Procedure Act, Title 2, ch. 4.

Fees, 69-1-114, 69-3-204.

Investigatory powers of Consumer Counsel, 69-2-203.

69-3-304. Temporary approval of rate increases or decreases. The commission may, in its discretion, temporarily approve increases or decreases pending a hearing or final decision. If the final decision is to disapprove an increase, the commission may order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval. If the final decision is to disapprove a decrease, the commission may order a surcharge to be paid by all consumers for the amount not collected retroactive to the date of the temporary approval. The commission shall order interest to be paid on a rebate or surcharge as determined by the commission. An order of the commission approving or denying a temporary rate increase or decrease shall be based upon consistent standards appropriate for the nature of the case pending and shall be an intermediate agency action subject to judicial review under the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 7, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

69-3-305. Deviations from scheduled rates, tolls, and charges. (1) A public utility may not:

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, has or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under 69-3-809.

(5) (a) A provider of regulated telecommunications service may offer, for a limited period of time, rebates, price reductions, or waivers of charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing for services other than basic local exchange access to end users does not require advance approval of the commission. Informational price lists must be filed with the commission on or before the date that the promotion begins. Promotional offerings for basic local exchange access to end users and packaged services that include basic local exchange access to end users require advance approval of the commission. The commission shall approve, deny, or upon a showing of good cause set for hearing an application for a promotional discount within 30 days of the filing of the application. If the commission has not acted on the application within the permitted time period, the application is considered granted.

(b) A public utility providing electricity or natural gas may offer grants and subsidized loans to install energy conservation and nonfossil forms of energy generation systems in dwellings.

(c) The commission may define the appropriate scope of promotions, rebates, market trials, and grants and subsidized loans, either by rule or in response to complaints. The commission may determine whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities and grant and subsidized loan programs that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(6) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. However, this does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.

History: En. Sec. 12, Ch. 52, L. 1913; re-en. Sec. 3892, R.C.M. 1921; re-en. Sec. 3892, R.C.M. 1935; R.C.M. 1947, 70-114; amd. Sec. 1, Ch. 327, L. 1983; amd. Sec. 6, Ch. 210, L. 1991; amd. Sec. 1, Ch. 207, L. 1993; amd. Sec. 2, Ch. 535, L. 1993; amd. Sec. 29, Ch. 349, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 349 in (5)(a), in first sentence near middle after "time", substituted "rebates, price reductions, or waivers of charges" for "either rebates or reductions or waivers of installation charges", in second sentence, near beginning after "pricing", substituted "for services other than local exchange access to end users does not" for "of services that remain fully tariffed", deleted former third sentence that read: "A promotional offering may not combine monopoly services with competitive services unless authorized by the Commission", and inserted third through sixth sentences providing a procedure for approval of promotional offerings by the Commission; and made minor changes in style. Amendment effective April 22, 1997.

Cross-References

Prohibition against laws impairing contracts, Art. II, sec. 31, Mont. Const.

69-3-306. Classification of service. (1) The commission may prescribe classifications of the service of all public utilities. Such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications.

(2) The commission shall prescribe a declining block rate structure for electric service, when cost-justified.

History: **En. Sec. 13, Ch. 52, L. 1913; re-en. Sec. 3893, R.C.M. 1921; re-en. Sec. 3893, R.C.M. 1935; R.C.M. 1947, 70-115; amd. Sec. 1, Ch. 517, L. 1985.**

Cross-References

Fees, 69-1-114, 69-3-204.

Power and energy companies, Title 69, ch. 5.

69-3-307. Treatment of advertisement costs and contributions. Costs or expenses incurred by public utilities for advertising, transfers of funds without full and adequate consideration, contributions, donations, and gifts may not be treated as expenses deductible from income or from capital assets or in any other manner by the public service commission in setting or regulating rates that may be charged by the public utilities pursuant to this chapter. This section does not apply to advertising that encourages the conservation of energy or product safety or informs the public of the availability of alternative forms of energy or recommends usage at times of lower rates or lower demand. Furthermore, for communications public utilities, the provisions of this section do not apply to advertising that relates to special equipment that is available to aid persons with disabilities or to special services that are designed to protect the public health, welfare, and safety, to promote more efficient use of a communications system, or to promote increased use of regulated communications services.

History: **En. 70-121.1 by Sec. 1, Ch. 297, L. 1975; R.C.M. 1947, 70-121.1; amd. Sec. 1, Ch. 452, L. 1989; amd. Sec. 75, Ch. 472, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 472 near middle of third sentence substituted "persons with disabilities" for "the handicapped"; and made minor changes in style.

Cross-References

Credit for energy-conserving investments, 15-30-125.

Credit for energy-conserving expenditures, 15-32-109.

Credit for installing alternative energy system, Title 15, ch. 32, part 2.

Home weatherization programs, Title 90, ch. 4, part 2.

69-3-308 and 69-3-309 reserved.

69-3-310. Rulemaking authority. The commission may adopt rules to implement this part.

History: **En. Sec. 8, Ch. 210, L. 1991.**

69-3-311 through 69-3-320 reserved.

69-3-321. Complaints against public utility — hearing. (1) The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club; by any body politic or municipal organization or association, the same being interested; or by any person, firm, or corporation, provided such person, firm, or corporation is directly affected thereby, that:

(a) any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory;

(b) any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of heat, light, water, power, or regulated telecommunications service, or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory; or

(c) any service is inadequate.

(2) No order affecting such rates, tolls, charges, schedules, regulations, measurements, practices, or acts complained of shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within 20 days unless further delayed by consent of all parties.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part); amd. Sec. 14, Ch. 546, L. 1985.

Cross-References

Witness fees and mileage, 26-2-501, 26-2-505.

69-3-322. Treatment of multiple complaints. When complaint is made of more than one rate, charge, or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of and at such times and places as it may prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

69-3-323. Complaint by public utility. Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by any mercantile, agricultural, or manufacturing society; body politic or municipal organization; or person. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-3-324. Initiation of action by commission itself. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services and after a full hearing as provided in this part may make by order such changes as may be just and reasonable, the same as if a formal complaint had been made.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

69-3-325. Notice of hearing. The commission shall give the public utility and the complainant or complainants at least 10 days' notice of the time when and the place where such hearing will be held.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part).

Cross-References

Fees, 69-1-114, 69-3-204.

69-3-326. Conduct of hearing. At the hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid. No fees or mileage shall be allowed unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part).

Cross-References

Witness fees in courts of record, 26-2-501.

Expert witnesses, 26-2-505.

Records of public utilities, 69-3-202.

69-3-327. Subpoena of witnesses. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission or any member or the secretary thereof may apply to the clerk of the nearest district court for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court and punished accordingly.

History: En. Sec. 18, Ch. 52, L. 1913; re-en. Sec. 3898, R.C.M. 1921; re-en. Sec. 3898, R.C.M. 1935; R.C.M. 1947, 70-120.

Cross-References

Refusal to obey subpoena or testify, 3-1-501; Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20); 26-2-104; 45-7-309.

Subpoenas, Title 26, ch. 2, part 1.

69-3-328. Depositions of witnesses. The commission or any party to any proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

History: En. Sec. 20, Ch. 52, L. 1913; re-en. Sec. 3900, R.C.M. 1921; re-en. Sec. 3900, R.C.M. 1935; R.C.M. 1947, 70-122.

Cross-References

Depositions and discovery, Rules 26 through 32, M.R.Civ.P. (see Title 25, ch. 20).

69-3-329. Immunity for witnesses. (1) No person shall be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any alleged violation of the provisions of this chapter on the ground of or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture. Except as provided in subsection (2), no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence.

(2) No person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History: En. Sec. 22, Ch. 52, L. 1913; re-en. Sec. 3902, R.C.M. 1921; re-en. Sec. 3902, R.C.M. 1935; R.C.M. 1947, 70-124.

Cross-References

Right against self-incrimination, Art. II, sec. 25, Mont. Const.

Perjury, 45-7-201.

Self-incrimination and immunity, 46-4-305.

69-3-330. Decision by commission. (1) If, upon such hearing and due investigation, the rates, tolls, charges, schedules, or joint rates are found to be unjust, unreasonable, or unjustly discriminatory or to be preferential or otherwise in violation of the provisions of this chapter, the commission may fix and order substituted therefor such rates, tolls, charges, or schedules as are just and reasonable.

(2) If the commission determines that a rate, toll, or charge has been collected in violation of 69-3-305(1)(b), the commission may order refunds or credits as specified in 69-3-305(3).

(3) If the commission finds that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this chapter or that the service is inadequate or any reasonable service cannot be obtained, the commission may substitute therefor other regulations, measurements, practices, services, or acts and make such order relating thereto as is just and reasonable.

(4) In any decision ordering a change in the rates which may be charged for electricity or natural gas, the commission shall list each expenditure submitted by the utility for allowance as an operating cost which is disallowed by the commission as an element of operating costs. The list of disallowed expenditures shall appear in the written decision of the commission and shall itemize each expenditure by amount, category, and purpose.

History: (1), (2)En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; Sec. 70-121, R.C.M. 1947; (3)En. 70-136 by Sec. 1, Ch. 290, L. 1975; Sec. 70-136, R.C.M. 1947; R.C.M. 1947, 70-121(part), 70-136; amd. Sec. 2, Ch. 327, L. 1983.

Part 4

Review of Commission Actions

Part Cross-References

Applicability of Montana Rules of Civil Procedure, Rule 81, M.R.Civ.P. (see Title 25, ch. 20).

69-3-401. Effective date of commission orders. All orders of the commission shall become operative within 20 days after the filing of the order by the commission, subject to the right of stay and injunction as provided in this part.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part).

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Injunctive relief from Commission order, 69-3-403.

69-3-402. Action to challenge commission order. (1) Any party in interest being dissatisfied with an order of the commission fixing any rate, fare, charge, classification, or joint rate or any order fixing any regulation, practice, or service may, within 30 days, commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside any such order on the ground that the rate, fare, charge, classification, or joint rate fixed in such order is unlawful or unreasonable or that any such regulation, practice, or service fixed in such order is unlawful or unreasonable.

(2) The commission and other parties defendant shall file their answer to said complaint within 20 days after the service thereof, whereupon such action shall be at issue and stand ready for hearing upon 20 days' notice to either party.

(3) All actions brought under this part shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the hearing thereof.

(4) In all actions under this part, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part); amd. Sec. 1, Ch. 366, L. 1979.

Cross-References

Venue, Title 25, ch. 2.

69-3-403. Injunctive relief. (1) Any party in interest, being dissatisfied with the order of the commission fixing any rate, fare, charge, classification, or joint rate or any order fixing or prescribing any rule, practice, or service, may apply to the district court having jurisdiction for an injunction, staying and suspending the operation of the order of the commission pending the final determination of the reasonableness and lawfulness of said order in the courts. Upon proper showing an injunction shall be issued by such court.

(2) As a condition to the granting of such injunction, the court shall require of the party seeking such injunction an undertaking entered into on the part of the plaintiff, supported by responsible corporate surety, in such reasonable sum as the court shall direct, to the effect that the plaintiff will pay all damages which the opposite party may sustain by reason of the delay or prevention of the order of the commission becoming effective if said order is sustained in the final determination, or in proceedings involving rates, the court may in the alternative require the difference between the existing rate and the commission ordered rate to be impounded under the direction of the court, pending the final determination of the action.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part).

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Suretyship, Title 28, ch. 11, part 4.

69-3-404. Review confined to record — exceptions. (1) Except as otherwise provided in this section, review shall be conducted by the court without a jury and shall be confined to the record.

(2) In cases of alleged irregularities in procedure before the agency not shown in the record, evidence thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(3) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons

for failure to present it in the proceeding before the agency, the court, before proceeding to render judgment, may transmit a copy of such evidence to the commission and, if such transmission is made, shall stay further proceedings in said action for 35 days from the date of such transmission. The court shall, within 14 days after the introduction of such evidence, decide whether or not to transmit a copy of such evidence to the commission. The court is considered to have ruled that the evidence need not be transmitted to the commission unless it orders otherwise within such 14-day period. Upon receipt of such evidence, the commission shall consider the same and may modify, amend, or rescind its order relating to such rate, fare, charge, classification, joint rate, regulation, practice, or service complained of in said action and shall report its action thereon to said court within 30 days from the receipt of such evidence.

(4) If the commission rescinds its order complained of, the action shall be dismissed. If it alters, modifies, or amends the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order is not rescinded or changed by the commission, judgment shall be rendered upon such original order.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(3), (4); amd. Sec. 2, Ch. 366, L. 1979; amd. Sec. 1, Ch. 187, L. 1983.

69-3-405. Appeal of court decision. Within 60 days after service of a copy of the order or judgment of the court, either party to said action may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(5).

Cross-References

Appeal to Supreme Court, 25-12-101; M.R.App.P. (see Title 25, ch. 21).

Part 5

Issuance of Securities and Creation of Liens

Part Cross-References

Uniform Commercial Code — investment securities, Title 30, ch. 8

69-3-501. Regulation of issuance of securities and creation of liens by utilities. (1) Whenever a public utility furnishing electric or gas service in the state has revenue derived from sources in Montana which exceeds $5 million or 5% of its gross revenue, the utility's right to issue, assume, or guarantee securities and to create liens on its property in the state is subject to the regulation and supervision of the commission, as set forth in this part.

(2) The public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume,

or guarantee other securities payable at periods of more than 12 months thereafter for the following purposes:

(a) the acquisition of property;

(b) the construction, completion, extension, or improvement of its facilities;

(c) the improvement or maintenance of its service;

(d) the discharge or lawful refunding of its obligations;

(e) the reimbursement of money actually expended for said purposes from income or from other money; or

(f) any other purpose approved by the commission.

History: En. Sec. 1, Ch. 74, L. 1961; R.C.M. 1947, 70-117.1; amd. Sec. 1, Ch. 354, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

69-3-502. Petition for issuance of securities. Such public utility shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption, or guarantee of securities and the application of the proceeds therefrom for the purposes specified.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-503. Prompt consideration of petition. All applications to the commission hereunder shall be disposed of promptly and in any event within 30 days after petition is filed with the commission unless, for good cause, it is necessary to continue consideration thereof for a longer period. Whenever such application is continued beyond said 30-day period, the commission shall enter its order effecting such continuance and stating fully therein the facts requiring continuance for a designated period of time.

History: En. Sec. 4, Ch. 74, L. 1961; R.C.M. 1947, 70-117.4.

69-3-504. Decision on petition. After such hearing and upon such notice as the commission may prescribe, the commission shall enter its written order approving the petition and authorizing the proposed securities transactions unless the commission shall find that:

(1) such transactions are inconsistent with the public interest;

(2) the purpose or purposes thereof are not permitted by this part; or

(3) the aggregate amount of the securities outstanding and proposed to be outstanding would exceed the fair value of the properties and business of the public utility.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-505. Issuance of certain short-term obligations. Such public utility may issue notes or drafts maturing not more than 1 year after the date of such issue, renewal, or assumption of liability and aggregating, together with all other then outstanding notes and drafts of a maturity of 1 year or less on which such public utility is primarily or secondarily liable, not more than 5% of the par value of the other securities of the public utility then outstanding, without application to or order of the commission. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issuance of such notes or drafts.

History: En. Sec. 3, Ch. 74, L. 1961; R.C.M. 1947, 70-117.3.

69-3-506. Unapproved securities void. Except as provided in 69-3-505, all securities issued, assumed, or guaranteed after July 1, 1961, without approval by the commission as provided herein shall be void.

History: En. Sec. 5, Ch. 74, L. 1961; R.C.M. 1947, 70-117.5.

69-3-507. State not obligated on securities. No provision of this part or any act or deed done or performed in connection therewith shall be construed to obligate the state to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed under the provisions of this part.

History: En. Sec. 6, Ch. 74, L. 1961; R.C.M. 1947, 70-117.6.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

State Finance, Title 17.

Part 6

Small Power Production Facilities

69-3-601. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission.

(2) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted to do business in Montana.

(3) "Qualifying small power production facility" means a facility that:

(a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other renewable resource, or any combination of those sources; or

(b) produces electricity and useful forms of thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes through the sequential use of energy known as cogeneration; and

(c) has a power production capacity that together with any other facilities located at the same site is not greater than 80 megawatts; and

(d) is owned by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility.

(4) "Utility" means any public utility supplying electricity and regulated by the commission.

History: En. Sec. 1, Ch. 436, L. 1981; amd. Sec. 1, Ch. 232, L. 1983.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-3-602. Generation and sale of electricity by qualifying small power production facility. (1) A qualifying small power production facility may generate electricity from the sources described in 69-3-601(3)(a) and (3)(b) and may contract for the sale of that electricity with a utility.

(2) A qualifying small power production facility may generate electricity from the sources described in 69-3-601(3)(a) and (3)(b) and may contract for the sale of that electricity with an electric cooperative under terms and conditions mutually agreed upon between the parties and in compliance with the rates and regulations established by the Public Utility Regulatory Policies Act.

History: **En. Sec. 2, Ch. 436, L. 1981; amd. Sec. 2, Ch. 232, L. 1983.**

69-3-603. Required sale of electricity under rates and conditions prescribed by commission. (1) If a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within 120 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination shall be made according to the standards prescribed in 69-3-604.

History: **En. Sec. 3, Ch. 436, L. 1981.**

69-3-604. Standards for determination of rates and conditions. (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through (5).

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility shall be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility shall be established with consideration of the availability and reliability of the electricity produced.

(4) The commission may set these rates by use of any of the following methods:

(a) the avoided cost over the term of the contract;

(b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or

(c) any other method that will promote the development of qualifying small power production facilities.

(5) The commission may adopt rules further defining the criteria for qualifying small power production facilities, their cost-effectiveness, and other standards.

History: **En. Sec. 4, Ch. 436, L. 1981; amd. Sec. 3, Ch. 232, L. 1983.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 7

Conservation Purchases or Investments by Utilities

69-3-701. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission created in 2-15-2602.

(2) "Conservation" means any reduction in electric power or natural gas consumption as a result of investment in measures that increase the efficiency of electricity or gas use in building shells, space heating or cooling equipment, water heating equipment, or refrigeration equipment or other cost-effective measures which, over its economic life meet the criteria of 69-3-702.

History: En. Sec. 1, Ch. 610, L. 1983; amd. Sec. 1, Ch. 304, L. 1987; amd. Sec. 7, Ch. 157, L. 1993.

69-3-702. Eligible conservation. Conservation purchases or investments are eligible under this part if they are provided for in 69-3-1206.

History: En. Sec. 3, Ch. 610, L. 1983; amd. Sec. 2, Ch. 304, L. 1987; amd. Sec. 8, Ch. 157, L. 1993.

69-3-703. Utility investment in or purchase of conservation — approval by commission. (1) A utility may:

(a) purchase conservation from a person or private firm; or

(b) directly engage in conservation investments.

(2) The conservation purchases or investments provided for in subsection (1) are subject to approval by the commission.

(3) Cost-effective conservation measures approved by the commission may, at the customer's discretion, be installed by either:

(a) a person or a private firm;

(b) the customer himself; or

(c) the utility.

History: En. Sec. 2, Ch. 610, L. 1983.

Cross-References

Credit for energy-conserving investments, 15-30-125.

Credit for energy-conserving expenditures, 15-32-109.

Credit for installing alternative energy system, Title 15, ch. 32, part 2.

Home weatherization programs, Title 90, ch. 4, part 2.

69-3-704 through 69-3-710 reserved.

69-3-711. Criteria for allowable conservation — onsite audits. (1) The commission shall approve cost-effectiveness criteria for conservation that will be placed into a utility's rate base under this part.

(2) The commission may conduct onsite energy audits to ensure compliance with the criteria established under subsection (1).

History: En. Sec. 5, Ch. 610, L. 1983.

69-3-712. Commission to include conservation in rate base — rate of return. (1) In order to encourage the purchase of or investment in conservation by a utility, the commission shall include conservation purchases or investments eligible under 69-3-702 and in compliance with criteria adopted under 69-3-711 in a utility's rate base.

(2) In establishing such rate of return the commission may allow an increment of up to 2% added to the rate of return on common equity permitted on the utility's other investments.

(3) The commission shall allow the rate of return increment provided for in subsection (2) for a period not to exceed 30 years after the conservation is first placed in the rate base.

(4) The commission shall prescribe amortization periods for conservation that is included in a utility's rate base.

History: En. Sec. 4, Ch. 610, L. 1983.

69-3-713. Prohibition against utility claiming conservation tax credit. A utility whose conservation is placed in the rate base under this part may not claim the tax credit allowed in 15-32-107.

History: En. Sec. 6, Ch. 610, L. 1983.

Part 8
Montana Telecommunications Act

Part Cross-References

9-1-1 emergency telephone system, Title 10, ch. 4.

69-3-801. Short title. This part may be cited as the "Montana Telecommunications Act".

History: En. Sec. 1, Ch. 546, L. 1985.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-3-802. Purpose. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment, and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services.

History: En. Sec. 2, Ch. 546, L. 1985; amd. Sec. 1, Ch. 210, L. 1991.

69-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the public service commission.

(2) "Eligible telecommunications carrier" means a telecommunications provider designated by the commission under 69-3-840.

(3) "Fund" means the universal service fund established in 69-3-842.

(4) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:

(a) on February 8, 1996, provided telephone exchange service in the area; and

(b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.

(5) "Private telecommunications service" means a system, including the construction, maintenance, or operation of the system, for the provision of telecommunications service or any portion of the service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation,

affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

(6) (a) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

(b) The term does not include the provision of terminal equipment used to originate or terminate the regulated service, private telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

(7) "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana and are billed for a service address in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission.

(8) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) provides common carrier service to any local exchange carrier study area that does not include either:

(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

(9) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

(10) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications services. The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

History: En. Sec. 3, Ch. 546, L. 1985; amd. Sec. 30, Ch. 349, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 349 inserted definitions of eligible telecommunications carrier, fund, incumbent local exchange carrier, retail revenue, rural telephone company, telecommunications, and telecommunications carrier or carrier; deleted definition of resale of telecommunications service (see 1997 Session Law for former text); in (b) of definition of regulated telecommunications service, after "private telecommunications service", deleted "resale of telecommunications service"; and made minor changes in style. Amendment effective April 22, 1997.

Cross-References
Public Service Commission, 2-15-2602.

69-3-804. Exemption for private telecommunications service. Construction, maintenance, or operation of a private telecommunications service does not constitute the provision of regulated telecommunications service, and a private telecommunications service is not subject to any of the provisions of this title. If any other person or entity, including the owners or shareholders of the entity owning or operating a private telecommunications service, uses the telecommunications service, whether for hire or not, the private telecommunications service is a regulated telecommunications service under this part. An occasional or accommodative use of a private telecommunication system by a third person is not a violation of this section.

History: En. Sec. 4, Ch. 546, L. 1985.

Cross-References
Construction and operation of telegraph line by railroad corporation, 69-14-563.

69-3-805. Registration of telecommunications providers. (1) Before any person or entity provides telecommunications service within the state of Montana, it shall file with the commission a notice including:

(a) the name, address, and telephone number of the provider;

(b) the name, address, and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the provider;

(c) a description of the provider's existing operations and general service and operating areas in any other jurisdictions;

(d) a list of the provider's parent, subsidiary, and affiliated companies, together with principal addresses and telephone numbers of each;

(e) initial tariffs or price lists for regulated telecommunications services, including a narrative description of the regulated telecommunications to be offered and the geographic area and markets to be served;

(f) a general description of the facilities and equipment that will be used to provide services, including whether the service will be offered on a facilities basis, a resale basis, or a combination of both of them;

(g) a statement of whether the provider intends to draw from the federal or state universal service fund or other explicit support funds, including a statement of whether the provider intends to seek the commission's designation as an eligible telecommunications carrier;

(h) disclosure of any formal actions against it by any court or state or federal regulatory agency that resulted in any type of penalty or sanction within the 5 years prior to the date of filing the notice;

(i) if the provider is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the provider's agent for service of process in Montana, and the date of creation of the business entity; and

(j) other information from regulated telecommunications carriers as the commission may require to accomplish the purposes of this chapter.

(2) The commission may waive any of the requirements set forth in subsection (1).

(3) The provider shall file with the commission a report of any judgment, penalty, or sanction entered in any other jurisdiction that could adversely affect the provider's ability to provide communications services in Montana.

History: **En. Sec. 5, Ch. 546, L. 1985; amd. Sec. 31, Ch. 349, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 349 in (1), near beginning before "telecommunications", deleted "regulated"; in (1)(a) inserted "telephone number"; deleted former (1)(b), (1)(c), and (1)(d) that read: "a narrative description of the regulated telecommunications service to be offered and the geographic area and markets to be served;

(c) initial tariffs for the regulated telecommunications service;

(d) such other information as the commission may require to accomplish the purpose of this chapter"; inserted (1)(b) through (1)(g) expanding list of specific information to be included on notice filed with Commission; in (2) substituted "The commission may waive any of the requirements set forth in subsection (1)" for "The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter"; inserted (3) requiring a provider to file with the Commission certain information that could adversely affect the provider's ability to provide communications services; and made minor changes in style. Amendment effective April 22, 1997.

69-3-806. Prohibition against cross-subsidization. A provider of regulated telecommunications services may not use current revenue earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services that are not regulated or are not tariffed. Expenses incurred in conjunction with services that are not regulated or that are not tariffed under this chapter may not be attributed to services that are subject to regulation for any reason.

History: **En. Sec. 6, Ch. 546, L. 1985; amd. Sec. 32, Ch. 349, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 349 deleted (2) that read: "(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title"; and made minor changes in style. Amendment effective April 22, 1997.

69-3-807. Regulation of rates and charges. (1) The commission may establish specific rates, tariffs, or fares for the provision of regulated telecommunications service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under terms and conditions that best serve the declared policy of this state. For a service detariffed under this subsection, the provider shall maintain a current price list on file with the commission and shall provide notice of changes in the price list as prescribed by the commission. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in the alternative may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

(d) provide other rate or service regulation as will promote the purposes of this part.

(3) Except as provided in subsection (4), in determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) other factors that the commission may prescribe through rulemaking that are appropriate to fulfill the purposes of this part.

(4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local exchange access to end-users and carrier access services may not be detariffed.

(5) A provider of regulated message telecommunications service and related services shall average its service rates on its routes of similar distance within the state unless otherwise authorized by the commission. This subsection may not be construed to prohibit volume discounts, discounts in promotional offerings, or other discounts as long as the discounts are not offered in a discriminatory manner.

History: En. Sec. 7, Ch. 546, L. 1985; amd. Sec. 3, Ch. 210, L. 1991; amd. Sec. 33, Ch. 349, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 349 in (1), at beginning, deleted "As to telecommunications service that is provided under regulation" and in first sentence, after "provision of", inserted "regulated telecommunications"; deleted (6) that read: "(6) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available"; and made minor changes in style. Amendment effective April 22, 1997.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

Ratemaking procedures, Title 69, ch. 3, part 3.

69-3-808. Forbearance of rate regulation to facilitate competition. (1) In accordance with the provisions of this section, the commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction, lease, or any other form of acquisition, similar telecommunications service from an alternative source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the commission for forbearance of regulation to facilitate competition. The application must describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service, together with other information and in a form that the commission may prescribe. The additional information must be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing the service.

(3) The commission shall approve or deny an application for forbearance of regulation to facilitate competition within 15 days after the filing of the application. If the commission has not acted on an application within the permitted time period, the application is considered granted. The commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer by parties other than the applicant. If a customer or potential customer of the provider seeking forbearance requests a quotation of prices from another provider of telecommunications service having tariffs or price lists for similar services on file with the commission, the commission may presume the existence of competition.

(4) The provisions of 2-4-601, relating to notice and hearing, do not apply to this section.

(5) Upon approval of the application, the provider of telecommunications service may negotiate with a person or an entity for the provision of the service without regard to its tariffs or price lists on file with the commission.

(6) Within 10 days after the conclusion of the negotiations, the provider of regulated telecommunications service shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service. Thereafter, for the term of the contract, the provider of regulated telecommunications service may provide the service to the customer without regard to its tariffs or price lists on file with the commission.

(7) Services provided pursuant to subsection (1) remain subject to the regulatory powers of the commission.

History: En. Sec. 8, Ch. 546, L. 1985; amd. Sec. 4, Ch. 210, L. 1991.

69-3-809. Alternative forms of regulation. (1) The commission may authorize a provider of regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking practices required under parts 2, 3, and 9 of this chapter, including but not limited to price caps and equitable sharing of earnings or revenues between a provider of regulated telecommunications services and its customers.

(2) A provider of regulated telecommunications services may petition the commission to regulate the provider under an alternative form of regulation. The provider shall submit its plan for an alternative form of regulation with its petition. The commission's order on the petition must be issued no later than 9 months after the filing of the petition. The commission shall review and may authorize implementation of the plan if it finds, after notice and hearing, that the plan:

(a) will not degrade the quality of or the availability of efficient telecommunications services;

(b) will produce fair, just, and reasonable rates for telecommunications services;

(c) will not unduly or unreasonably prejudice or disadvantage a customer class;

(d) will reduce regulatory delay and costs;

(e) is in the public interest;

(f) will enhance economic development in the state;

(g) will result in the improvement of the telephone infrastructure in the state; and

(h) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or 9 of this chapter conforms to the stated purpose.

(3) If the commission determines that the plan does not satisfy the requirements of this section, it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.

(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:

(a) remains subject to the same regulation that applied when the petition was filed; and

(b) may petition the commission to be regulated under a revised alternative plan.

(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are no longer satisfied.

(6) Nothing contained in this section may be construed as limiting or otherwise affecting the commission's authority to conduct investigations or hear complaints as provided in part 3 of this chapter.

History: En. Sec. 2, Ch. 210, L. 1991.

69-3-810. New service — withdrawal of services. (1) A provider of regulated telecommunications service shall provide notice, in the form prescribed by the commission, of its intent to offer a new service to its customers. The notice must include a description of the service, a minimum price, and the terms and conditions under which it will be offered. At the end of a 10-day comment period for interested parties, the commission may immediately approve, suspend, or disapprove the new service offering or it may allow the interim introduction of the service pending a hearing at a later date. If the commission has not acted at the end of 30 days following issuance of notice, the provider may proceed to offer the service.

(2) A new service may be offered on a detariffed basis. A price list containing the price of the new service must be filed with the commission at the time the service is offered to the public.

(3) For purposes of this section, "new service" means any service that is introduced separately or in combination with other services and that is not functionally required to provide local exchange service or that is not a repackaged current service or a direct replacement for a regulated telecommunications service.

(4) A provider of regulated telecommunications service may withdraw a service upon 30 days' notice to the commission and to the users of the service. The commission may, however, suspend the withdrawal of the service, either on its own motion or at the request of an interested person, and shall then proceed to hearing.

History: En. Sec. 5, Ch. 210, L. 1991.

69-3-811. Costs for services provided — jurisdiction over complaints. (1) Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.

(2) With regard to competitive services, the term "relevant costs" includes the price for any components that are used by the telecommunications provider and that would be essential for alternative providers to use in providing the competitive services pursuant to commission-approved methodology.

(3) The commission has jurisdiction to consider complaints and initiate investigations to determine whether the price charged by a provider of regulated telecommunications service is above relevant costs. The commission may also consider complaints that a pricing or promotional practice violates any provision of this title.

History: En. Sec. 7, Ch. 210, L. 1991.

69-3-812 through 69-3-820 reserved.

69-3-821. Examination of books and records. Nothing in this part precludes the commission from exercising its authority under the provisions of 69-3-202. The commission may require such accounting or reporting systems as are necessary to allow a proper allocation of investments, costs, or expenses that are joint or common to both regulated telecommunications services and other services or to both tariffed regulated telecommunications services and nontariffed regulated telecommunications services.

History: En. Sec. 9, Ch. 546, L. 1985.

69-3-822. Rulemaking authority. The commission may adopt rules to implement this part.

History: En. Sec. 10, Ch. 546, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-823. Exception. Nothing in this part affects the exemption from regulation provided by 35-18-104.

History: En. Sec. 13, Ch. 546, L. 1985.

69-3-824. No preemption of laws governing anticompetitive activity. Nothing in this part in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitive activity.

History: En. Sec. 15, Ch. 546, L. 1985.

Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

Unfair trade practices generally, Title 30, ch. 14, part 2.

69-3-825 through 69-3-830 reserved.

69-3-831. Interconnection — construction and effect. Sections 69-3-832 through 69-3-849 and this section do not grant any jurisdiction to the commission over telecommunications carriers except as expressly set forth in 69-3-832 through 69-3-849 and this section, and 69-3-832 through 69-3-849 and this section may not be construed to limit or repeal exemptions from the commission's jurisdiction otherwise recognized by statute or law. Legislation may not be considered to supersede or modify any provision of 69-3-832 through 69-3-849 and this section except to the extent that the legislation does so expressly.

History: En. Sec. 1, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-832. Interconnection — jurisdiction. In addition to the authority granted to the commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the purposes of implementing 69-3-831, 69-3-833 through 69-3-839, and this section, over all telecommunications carriers.

History: En. Sec. 2, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-833. Rulemaking authority. The commission may adopt rules of procedure to implement 69-3-836 through 69-3-840.

History: En. Sec. 3, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-834. Duty to interconnect. (1) The purpose of this section is to implement specific provisions of the federal Telecommunications Act of 1996, Public Law 104-104.

(2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

(b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

(c) In addition to the duties provided for in subsection (2)(b), each incumbent local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(c).

(3) (a) Except under the circumstances set forth in subsection (4), the provisions of subsection (2)(c) do not apply to a rural telephone company until:

(i) the company has received a bona fide request for interconnection, services, or network elements; and

(ii) the commission determines under subsection (3)(b) that the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)).

(b) The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the commission. The commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption provided by subsection (3)(a). Within 120 days after the commission receives notice of the request, the commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)). Upon termination of the exemption, the commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with the federal communications commission's regulations.

(4) The exemption provided by subsection (3)(a) does not apply with respect to a request from a cable operator providing video programming and seeking to provide any telecommunications service in the area in which the rural telephone company was providing video programming on February 8, 1996.

(5) (a) A local exchange carrier with fewer than 2% of the nation's subscriber lines, installed in the aggregate nationwide, may petition the commission for a suspension or modification of the application of a requirement of subsection (2)(b) or (2)(c) to telephone exchange service facilities specified in the petition. The commission shall grant the petition for the suspension or modification to the extent and for the duration that the commission determines:

(i) is necessary:

(A) to avoid a significant adverse economic impact on users of telecommunications services generally;

(B) to avoid imposing a requirement that is unduly economically burdensome; or

(C) to avoid imposing a requirement that is technically infeasible; and

(ii) is consistent with the public interest, convenience, and necessity.

(b) The commission shall act upon any petition filed under subsection (5)(a) within 180 days after receiving the petition. Pending action, the commission may suspend enforcement of the requirement to which the petition applies with respect to the petitioning carrier.

History: En. Sec. 4, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-835. Voluntary negotiation of interconnection agreements. Upon receiving a request for interconnection, services, or network elements pursuant to 69-3-834, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier without regard to the duties set forth in 69-3-834(2)(b) or (2)(c). The agreement must include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement.

History: En. Sec. 5, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-836. Mediation of interconnection agreements. Upon the written request of any party negotiating an agreement for interconnection with another telecommunications carrier, the commission may designate a mediator, who may be a commission member, to mediate any differences arising in the course of the negotiation.

History: **En. Sec. 6, Ch. 349, L. 1997.**

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-837. Arbitration of interconnection issues. (1) The commission has the authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed on February 8, 1996, according to the duties in subsections (3) through (14) of this section. Except as expressly provided in this section, the provisions of the Montana Administrative Procedure Act do not apply to arbitrations conducted under the authority granted by this section.

(2) During the period from the 135th to the 160th day, inclusive, after the date on which an incumbent local exchange carrier receives a request for negotiation under 69-3-834, the carrier or any other party to the negotiation may petition the commission to arbitrate any open issues. A party that petitions the commission under this section shall, at the same time as it submits the petition, provide the commission all relevant documentation concerning the following:

(a) the unresolved issues;

(b) the position of each of the parties with respect to those issues; and

(c) any other issue discussed and resolved by the parties.

(3) A party petitioning the commission under this section shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the commission receives the petition.

(4) A nonpetitioning party to a negotiation under 69-3-834 may respond to the other party's petition and provide any additional information that it wishes within 25 days after the commission receives the petition.

(5) The commission shall limit its consideration to those issues set forth by the parties to the negotiation in the petition for arbitration and the response to the petition.

(6) The commission may appoint a hearings examiner for arbitration proceedings under this section. The hearings examiner shall file with the commission a proposed decision within the time set by order of the commission. A hearings examiner must be assigned with regard to the expertise required for the particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the commission shall determine the affidavit or motion as a part of the record in the case. The commission may disqualify the hearings examiner and appoint another hearings examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

(7) Participation in the arbitration proceeding must be limited to the telecommunications carrier requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and the Montana consumer counsel.

(8) Negotiations among the telecommunications carriers may continue, pending a final decision by the arbitrator.

(9) Unless otherwise agreed to by the parties, the commission shall, within 10 days of the filing of a request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and a hearing date.

(10) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties are entitled to be heard, present evidence material to the issues, and cross-examine witnesses appearing at the hearing. Parties must be allowed to conduct discovery pursuant to the schedule determined by the arbitrator, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

(11) The commission may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being arbitrated and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The commission shall regulate the course of the hearings and the need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

(12) The commission shall issue its final decision no later than 9 months after the request for negotiations on a petition issued under 69-3-834. When the commission files its final decision or when the hearings examiner files the proposed decision with the commission, each party must be simultaneously given a copy delivered personally or by certified mail. The decision must:

(a) ensure the resolution of issues presented by the parties and ensure that the resolution meets the requirements of 69-3-834 and this section;

(b) establish rates for interconnection, services, or access to unbundled network elements pursuant to 47 U.S.C. 252(d); and

(c) provide a schedule for implementation of the terms and conditions of the decision by the parties.

(13) If the person who conducted the hearing becomes unavailable to the commission, the commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(14) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an arbitration proceeding, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

History: En. Sec. 7, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-838. Approval of arbitration decision. (1) If the commission has not approved or rejected in its entirety an agreement adopted by arbitration under 69-3-837(12) within 30 days of submission by the parties, the agreement is considered approved.

(2) The commission may reject the agreement only if the commission finds that the agreement does not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by the federal communications commission or the standards set forth in 47 U.S.C. 252(d). Upon rejection of an agreement, the commission shall provide the parties with written findings as to any deficiencies.

History: En. Sec. 8, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-839. Approval of interconnection agreements. (1) Within 90 days of filing of an interconnection agreement adopted by negotiation of the parties to an agreement, the commission shall approve or reject the agreement, or the agreement is considered approved.

(2) The commission may reject an agreement filed under this section only if the commission finds that:

(a) the agreement or a portion of the agreement discriminates against a telecommunications carrier not a party to the agreement; or

(b) the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity.

(3) Upon rejecting an agreement filed under this section, the commission shall issue written findings detailing any deficiencies in the agreement.

History: En. Sec. 9, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-840. Determination of eligible carrier status — universal service support. (1) The commission is authorized to designate telecommunications carriers as eligible for federal universal service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, and for any Montana universal service funds. This authorization applies to all telecommunications carriers notwithstanding the carrier's exemption from further regulation by the commission.

(2) Upon the petition of a telecommunications carrier, or upon its own motion, the commission shall designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible telecommunications carrier for a service area designated by the commission. In the case of an area served by a rural telephone company, the term "service area" means the company's "study area" for federal universal service support unless the federal communications commission establishes a different definition of service area for the company. The term "service area" for all other telecommunications carriers means a geographic area such as a census block or grid block as established by the commission for the purpose of determining federal universal service obligations and support mechanisms.

(3) Upon receiving a petition from a telecommunications carrier and consistent with the public interest, convenience, and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one telecommunications carrier for a service area, so long as each additional requesting telecommunications carrier meets the requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.

(4) If no telecommunications carrier will provide the services that are supported by universal service support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests service, the commission shall determine which telecommunications carrier is best able to provide the service to the requesting unserved community. Any telecommunications carrier ordered to provide service under this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible telecommunications carrier for that community or the unserved portion of the community.

(5) The commission shall permit an eligible telecommunications carrier to relinquish its designation as an eligible carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the commission approves relinquishment under this section, within which the purchase or construction must be completed.

History: En. Sec. 10, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-841. *(Temporary)* **Universal service policies.** The legislature finds that universally available telecommunications services are essential to the health, welfare, and economic well-being of the citizens of Montana. The federal Telecommunications Act of 1996, Public Law 104-104, requires a transition to local competition. Implicit subsidies have historically been used to further the public policy of keeping local rates to customers in high-cost areas at affordable levels. The federal act and the transition to competition require that all subsidies used to keep local rates at affordable levels be explicit. Additionally, the federal act's universal service provisions establish a system of discounts for schools, libraries, and health care providers. Securing these discounts can be dependent on state actions. In order to preserve and advance the goal of universal service in the new competitive environment established by the federal act, the legislature finds that a new Montana universal service fund, supported by contributions from the telecommunications carriers operating in Montana, should be created that will:

(1) not duplicate the federal universal service fund mandated by the Telecommunications Act of 1996 but that will complement the federal fund by providing additional funding as necessary to ensure universal service in the state of Montana;

(2) be competitively and technologically neutral in both funding and distribution;

(3) provide a specific, predictable, and sufficient mechanism of support for high-cost areas; and

(4) allow for implementation of the federal support system for telecommunications services provided to schools, libraries, and health care providers. *(Terminates December 31, 1999—sec. 41, Ch. 349, L. 1997.)*

History: En. Sec. 11, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-842. *(Temporary)* **Universal service fund established — purpose.** (1) Pursuant to a determination of need, the commission shall establish and administer a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. The fund must provide support for the following services:

(a) voice grade access to the public switched network, including some usage;

(b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;

(c) single-party service;

(d) access to emergency services, including access to 9-1-1, where available, and access to enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the telecommunications carrier has technical capacity to provide it;

(e) access to operator services;

(f) access to interexchange services; and

(g) access to directory assistance.

(2) The fund must support only access to the services listed in subsections (1)(d) through (1)(g) and not support the services themselves.

(3) The fund must be administered to ensure that its operation is competitively and technologically neutral. *(Terminates December 31, 1999—sec. 41, Ch. 349, L. 1997.)*

History: En. Sec. 12, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-843. *(Temporary)* **Fund administrator.** (1) A fiscal agent and daily administrator must be selected to receive and distribute funds under 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section.

(2) The fiscal agent must be selected by the commission based upon a competitive bidding process after an opportunity for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract consistent with 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section. The contract term of the fiscal agent must expire December 31, 1999.

(3) The fiscal agent shall provide quarterly reports of fund activities to the commission and shall provide audits annually by a certified public accountant in a manner determined by and under the direction of the commission.

(4) The financial accounts of the fiscal agent must be available at reasonable times to any telecommunications carrier in the state and to the public. The commission may investigate the accounts and practices of the fiscal agent and enter orders concerning the accounts and practices. *(Terminates December 31, 1999—sec. 41, Ch. 349, L. 1997.)*

History: En. Sec. 13, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-844. *(Temporary)* **Contributions to fund.** (1) The fiscal agent shall collect contributions from all telecommunications carriers on a quarterly basis, based on a July 1 to June 30 fiscal year. Initial contributions to the fund may only be collected for the 2-month period prior to the effective date of distributions from the fund and must be calculated as follows:

(a) determine the total retail revenue for all telecommunications carriers for the immediately preceding calendar year;

(b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant to 69-3-845;

(c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce an amount equal to the fund total calculated in subsection (1)(b);

(d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund shortfalls or excesses in the previous fiscal year; and

(e) send notice of the current uniform percentage and appropriate remittance forms to each telecommunications carrier at least 2 months prior to the effective date of the application of the percentage.

(2) The commission shall adopt procedural rules to govern collection of the contributions required by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in the district courts of Montana.

(3) Any reduction in telecommunications carrier access expenses because of the removal of implicit subsidies inherent in telecommunications carrier

access rates must be passed through to Montana end-user customer retail rates. *(Terminates December 31, 1999—sec. 41, Ch. 349, L. 1997.)*

History: En. Sec. 14, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-845. *(Temporary)* **Distributions from fund — calculation of costs.** (1) Subject to the requirements of this section, payments from the fund must be made by the fiscal agent to qualifying eligible telecommunications carriers, on a monthly basis, pursuant to rules adopted by the commission.

(2) Only eligible telecommunications carriers that offer the telecommunications services described in 69-3-842(1) to all customers in a designated support area and that advertise the availability of the telecommunications services and the charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area.

(3) Distributions must be calculated for the designated support areas established by the commission. In the case of an area served by a rural telephone company, the term "designated support area" means the rural telephone company's Montana service area unless the rural telephone company voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone company's designated support area must be an area designated by the commission, which may be smaller than a wire center. The term designated support area for all other telecommunications carriers means a geographic area as established by the commission, which must be smaller than a wire center.

(4) Support for the services listed in 69-3-842(1) must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark in that support area. The commission shall adopt rules to determine affordability benchmarks.

(5) Except as provided in subsection (6), for rural telephone companies and other eligible telecommunications carriers offering services in a designated support area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:

(a) If an additional eligible telecommunications carrier has not been designated pursuant to 69-3-840(3), the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport costs, and customer operations costs assigned to the telecommunications services set forth in 69-3-842(1), which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(b) Upon the designation of an additional eligible telecommunications carrier pursuant to 69-3-840(3) in a designated support area served by a rural telephone company, the additional eligible telecommunications carrier has access to the fund on the same basis as the rural telephone company. Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural telephone company must receive distributions from the fund based upon the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. The support for each line for each geographic area must be based upon the rural telephone company's costs, as determined in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the commission.

(6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each line in designated support areas must be calculated based on the cost proxy model adopted by the commission. This total per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(7) In determining any proxy mechanism under this section, the commission shall use a model that:

(a) targets support to a geographic area smaller than a wire center;

(b) uses acceptable outside plant design and costing principles;

(c) uses reasonable switch design and costing principles;

(d) includes a reasonable share of the joint and common costs of the telecommunications carrier;

(e) meets standards for documenting model logic and the sources of cost data input; and

(f) meets reasonableness tests to ensure that model outputs are representative of costs that can be reasonably expected in the construction of a network and that the network is capable of providing telecommunications services that meet the telecommunications services quality standards of the commission and federal regulators.

(8) An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications services or facilities if the rates charged to an eligible telecommunications carrier by the other telecommunications carrier have been reduced by a contribution from universal service funds under this section.

(9) Costs of administering the fund must be paid from the fund. *(Terminates December 31, 1999—sec. 41, Ch. 349, L. 1997.)*

History: En. Sec. 15, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-846. Discounts for schools, libraries, and health care providers. The commission is authorized to establish intrastate discounts to schools, libraries, and health care providers and to perform administrative functions necessary as a condition of federal universal service support if the discounts are recovered through the federal universal service fund.

History: En. Sec. 16, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-847. Wholesale pricing standards. (1) Except as provided in subsection (2), if the commission is requested by a telecommunications carrier to establish wholesale prices for services provided by a telecommunications carrier, the commission may not establish a wholesale price using a default proxy discount value to be applied to the applicable retail price. The commission shall establish wholesale prices using company-specific costs.

(2) This section does not apply to the prices, terms, and conditions of a final or interim arbitrated interconnection agreement, arbitration decision, or appeal from an agreement or decision if the request for arbitration was filed on or before March 1, 1997.

History: En. Sec. 17, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-848. Pricing of individual network elements. (1) Except as provided in subsection (4), if the commission is requested by a telecommunications carrier to establish the prices of the individual network elements used to provide telecommunications services, the commission shall set those prices at a just and reasonable level sufficient to recover the actual cost of providing those elements, including:

(a) a reasonable share of the joint and common costs so that the telecommunications carrier has a reasonable opportunity to recover these costs;

(b) depreciation costs that are based upon forward-looking asset lives consistent with asset lives of other telecommunications carriers and that reflect an amortization of any underdepreciated investment;

(c) a reasonable share of the costs associated with fill factors, recognizing spare capacity required to fulfill eligible telecommunications carrier responsibilities; and

(d) a fair return on investments.

(2) The actual cost of providing the elements included in subsections (1)(a) through (1)(d) must be determined without reference to a rate-of-return or other rate-based proceeding.

(3) If a telecommunications carrier uses average prices for services to end users without regard to the customer's location, the commission shall similarly establish an average cost and wholesale price for each individual network element sold to other telecommunications carriers. The commission may depart from average pricing for network elements only to the extent that the retail prices to end users of a telecommunications carrier have departed from average pricing.

(4) This section does not apply to the prices, terms, and conditions of a final or interim arbitrated interconnection agreement, arbitration decision, or appeal from an agreement or decision if the request for arbitration was filed on or before March 1, 1997.

History: En. Sec. 18, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-849. Prohibited subsidies. The commission may not subsidize the price of any telecommunications service, including wholesale prices or the prices of individual network elements, by reducing the prices to reflect an allocation or credit of revenue from the operations of an affiliated company of the carrier of telecommunications services, including a publishing affiliate.

History: En. Sec. 19, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-850 through 69-3-855 reserved.

69-3-856. Interim universal access program — definitions. As used in 69-3-857 through 69-3-862 and this section, the following definitions apply:

(1) "Administrator" means the public service commission.

(2) "Advanced services" means high-speed (56 kbps and above), dedicated or switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(3) "Health care provider" means any one of, or a consortium of, the following institutions located in Montana:

(a) postsecondary educational institutions offering health care instruction;

(b) community health care centers or health centers providing health care to migrants;

(c) local health departments or agencies;

(d) community mental health centers;

(e) not-for-profit hospitals; and

(f) rural health clinics.

(4) "Library" means a library located in Montana that is eligible for participation in state-based plans for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c, et seq.).

(5) "School" means:

(a) an elementary school or secondary school that meets the definition set forth in subsections (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801) and that does not have an endowment of more than $50 million; or

(b) a bureau of Indian affairs elementary and secondary school.

(6) "Tribal college" means a college recognized by the United States government as a tribal college.

History: En. Sec. 21, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-857. Interim universal access program — public access points. At a minimum, all public access points must provide the general public access to advanced telecommunications services that are not subscription-based. The access must be provided free of charge and at convenient hours on a walk-in basis. Public access points may offer subscription- based services, such as electronic mail, but are not required to administer these types of services.

History: En. Sec. 22, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-858. Interim universal access program — funded services — application for services. (1) The universal access program provides funding through discounts only for advanced services for use by public access points, schools, tribal colleges, libraries, and health care providers approved by the administrator.

(2) The first priority of the program is to provide funding for at least one public access point in each Montana community. Subject to available funding, the program shall also provide funding for advanced services to schools, tribal colleges, libraries, and health care providers.

(3) The administrator shall establish discount levels for services in each of the following categories:

(a) public access points;

(b) education services to schools and tribal colleges for distance learning, electronic access to educational resources, and electronic delivery or reception of educational programming;

(c) library services for libraries not serving as public access points for electronic access to information and library services; and

(d) rural health services to rural health care providers for access to similar services as urban health care providers and to ensure electronic access to health care services.

(4) To receive discounted services under the interim universal access program, public access providers, schools, tribal colleges, libraries, and health care providers shall apply for the discounts. The application must be accompanied by a resolution of support from the governing body of the appropriate city, county, or tribal government in which the applicant is located.

History: En. Sec. 23, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-859. Interim universal access program — services provided at discounts — reimbursements. (1) Telecommunications carriers shall provide advanced services to eligible users at specified discounts. The amount of the discount must be reimbursed to the provider from the interim universal access account established in 69-3-861.

(2) Except as provided in subsection (3), the advanced discount is equal to 50% of the best cost rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest access point for the requested service. However, the cost to the eligible user may not exceed $100 a month.

(3) If funds from the interim universal access account are not sufficient to fully reimburse for discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced proportionally.

(4) Even if best cost rates available to any business customer increase by more than 5%, the amount payable by an eligible user may not increase by more than 5% during the period from April 22, 1997, to January 1, 2000.

(5) Subject to restrictions in federal law, if interstate universal access services are established by the federal communications commission, federal funding for universal access services must be used to reduce state funding for intrastate services.

History: En. Sec. 24, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-860. Interim universal access program — funding — surcharge rate. (1) (a) The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate telecommunications services in the state. The surcharge must be determined by the administrator by rule. The surcharge must be set and applied to all telecommunications carriers on a competitively neutral basis.

(b) The rate of the surcharge must be set to raise $250,000 during the fiscal year ending June 30, 1998, and $500,000 during the fiscal year ending June 30, 1999. The rate may be changed, by rule, as necessary.

(c) The payment of the surcharge is an explicit subsidy and may be shown as a separate line item on each carrier's retail telecommunications services bills.

(d) The surcharge may be applied only to telecommunications services. Customer premise equipment is not considered a telecommunications service.

(2) The surcharge is payable quarterly to the department of revenue and deposited by the department in the interim universal access account established in 69-3-861. The department may by rule:

(a) establish the form of a reporting statement to be filed by telecommunications carriers subject to the surcharge;

(b) set the date after the end of a fiscal quarter that the quarterly payment must be made;

(c) provide for recordkeeping by telecommunications providers subject to the surcharge; and

(d) provide methods to pay the surcharge, including offsets of surcharges owed against discounted services to be reimbursed, and to pay refunds of overpayment of the surcharge.

(3) (a) The collection of a surcharge under this section is subject to:

(i) the deficiency assessment, review, interest, and penalty provisions of 15-53-105;

(ii) the penalty and interest for delinquency and waiver provisions of 15-53-111;

(iii) the estimation of tax on failure to file a statement provisions of 15-53-112;

(iv) the warrant for distraint provisions of 15-53-113; and

(v) the statute of limitations provisions of 15-53-115.

(b) Any reference to the tax under sections listed in subsection (3)(a), either by cite to a section of law or literally to the tax, refer, for the purposes of this section, to the surcharge imposed by this section.

History: En. Sec. 25, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-861. Interim universal access program — account. An interim universal access account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to 69-3-860 must be paid to the state treasurer for deposit in the account. After payment of refunds, the balance of the account must be used for the purposes described in 69-3-859.

History: En. Sec. 26, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-862. Commission to make recommendations on universal access and service. (1) The public service commission shall examine and make recommendations to the 56th legislature on universal access and service. The commission shall:

(a) review the impact on universal access and service in Montana of any federal universal service fund that results from current federal communications rulemaking under the federal Telecommunications Act of 1996; and

(b) evaluate the extent to which the federal universal service fund falls short of supporting legislatively defined universal access and service goals in Montana.

(2) The commission may develop plans and propose legislation that would ensure the attainment of universal access and service goals in Montana.

History: En. Sec. 27, Ch. 349, L. 1997.

Compiler's Comments

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Part 9

Rate Regulation of Small Telecommunications Providers

69-3-901. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission.

(2) "Rate" means a charge by a small telecommunications provider to a subscriber for the initiation or continued provision of regulated telecommunications service. The term includes but is not limited to charges for installations, local service, toll service, directory assistance, and late payment.

(3) "Rate increase" means an increase in the rates for regulated telecommunications services provided by a small telecommunications provider and the creation of new rates.

(4) "Regulated telecommunications service" is as defined in 69-3-803.

(5) "Small telecommunications provider" means a person, partnership, corporation, or other entity providing regulated telecommunications service to less than 5,000 subscribers in Montana. Rural telephone cooperatives organized under Title 35, chapter 18, are not small telecommunications providers.

(6) "Subscriber" means a person, partnership, corporation, or other entity acquiring regulated telecommunications service from a small telecommunications provider. There is one subscriber for each billed line of a small telecommunications provider.

History: **En. Sec. 1, Ch. 254, L. 1987.**

69-3-902. Rate regulation of small telecommunications provider. Except as provided in this part, small telecommunications providers are not subject to commission rate regulation provided in parts 3 and 8 of this chapter.

History: **En. Sec. 2, Ch. 254, L. 1987.**

69-3-903. Notice of rate increase. (1) At least 60 days before the effective date of any rate increase proposed by a small telecommunications provider, the small telecommunications provider shall mail notice of the proposed rate increase to each affected subscriber, the commission, and the Montana consumer counsel.

(2) Notice to the commission and consumer counsel must include:

(a) a summary of the justification for the proposed rate increase;

(b) a list of the number of affected subscribers in each category of rates proposed to be increased; and

(c) if requested by the commission, a list of the names of the affected subscribers.

(3) The notice to affected subscribers may be included with regular subscriber billings and must include:

(a) a schedule of the proposed rates;

(b) the effective date of the proposed rates; and

(c) a description of the petition procedure in 69-3-906 for seeking commission review and determination of the proposed rates. If the small telecommunications provider publishes the petition procedure in a telephone directory, a reference to the location of the procedure in the directory is adequate notice.

History: En. Sec. 3, Ch. 254, L. 1987.

69-3-904. Commission review and determination of rate increases. (1) When a small telecommunications provider proposes a rate increase, the commission shall review and determine the rates pursuant to the applicable procedures in this chapter if:

(a) the affected subscribers have successfully petitioned for commission review as described in 69-3-906;

(b) the small telecommunications provider requests the commission to review and determine the rates; or

(c) by the 60th day following notice of the proposed increase, the consumer counsel petitions the commission to review and determine the rates.

(2) An order of the commission issued under this section establishes the effective rate for the regulated telecommunications services covered by the order. Rates established by commission order may not be increased for a period of 6 months, except as ordered by the commission.

(3) The order of the commission is subject to review pursuant to part 4 of this chapter.

History: En. Sec. 4, Ch. 254, L. 1987.

69-3-905. Investigations by commission. Nothing in this part limits the authority of the commission under 69-3-324 to investigate at any time and on its own motion the existing rates of a small telecommunications provider.

History: En. Sec. 5, Ch. 254, L. 1987.

69-3-906. Petition for review of proposed rate increase. Subscribers affected by a proposed rate increase for regulated telecommunications services by a small telecommunications provider may petition the commission to review and determine the rates. The petition must identify the proposed rate increase and must be in writing and signed by a subscriber or the authorized person if the subscriber is a business account.

History: En. Sec. 6, Ch. 254, L. 1987.

69-3-907. Proposed increase effective unless requisite petitions received by commission. (1) If by the 60th day following notice to subscribers of a proposed rate increase the commission has not received petitions containing signatures from at least 10% of the affected subscribers in any rate category or a petition for review from the consumer counsel, the commission shall certify this fact to the small telecommunications provider and the proposed rate increase becomes effective as published in the notice of proposed increase.

(2) If by the 60th day following notice to subscribers of a proposed rate increase the commission has received petitions containing signatures from 10% or more of the affected subscribers in any rate category or a petition for review from the consumer counsel, the commission shall notify the small telecommunications provider of this fact and shall indicate that the proposed rate increase in that rate category will not take effect as noticed. The commission shall then review and determine the rates in that category pursuant to 69-3-904.

(3) In the case of a proposed increase in rates for access services provided to interexchange carriers, a valid petition for commission review and determination of rates consists of a signature of an authorized representative of any interexchange carrier that would be affected by the access rates that are proposed to be increased.

History: **En. Sec. 7, Ch. 254, L. 1987.**

Part 10

Telephone Low Income Assistance Program

69-3-1001. Creation of program — amount of assistance. (1) There is a telephone low-income assistance program to provide an eligible subscriber with a discount in the monthly charge for local exchange service in the telephone network.

(2) The commission shall set the discount in the charge for local exchange service that is at least $3.50 a month for each eligible subscriber but not more than the amount that is the difference between the otherwise applicable current rate for local exchange service and the rate as it was on April 22, 1997.

History: **En. Sec. 1, Ch. 391, L. 1987; amd. Sec. 34, Ch. 349, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 349 in (2), at beginning, substituted "The commission shall set the discount" for "This discount" and after "service" substituted "that is at least $3.50 a month for each eligible subscriber but not more than the amount that is the difference between the otherwise applicable current rate for local exchange service and the rate as it was on April 22, 1997" for "is the greater of:

(a) $2 a month for each eligible subscriber; or

(b) the amount necessary to obtain the matching waiver available under applicable orders and regulations of the federal communications commission". Amendment effective April 22, 1997.

69-3-1002. Eligibility — rules. (1) A residential subscriber with single telephone line service at the subscriber's principal residence is eligible for low income telephone assistance if the subscriber is certified by the department of public health and human services as a recipient of medicaid benefits.

(2) The department shall periodically certify and verify the eligibility of a subscriber to receive low income telephone assistance.

(3) The department may adopt rules to establish procedures for the certification and verification of eligible subscribers.

History: **En. Sec. 2, Ch. 391, L. 1987; amd. Sec. 519, Ch. 546, L. 1995.**

69-3-1003. Reimbursement for discounts. (1) The public service commission shall authorize an additional monthly charge for each residential access line to fully reimburse providers of local telecommunications services for discounts given eligible subscribers.

(2) The additional monthly charge for local exchange service applies to residential subscribers of providers of local telecommunications services that participate in the low income telephone assistance program.

(3) Participation of each provider in the low income telephone assistance program must be administered separately by the public service commission.

History: **En. Sec. 3, Ch. 391, L. 1987.**

69-3-1004. Administration — rules. (1) The public service commission shall monitor the effectiveness of the low income telephone assistance program and issue annual reports as provided in 69-3-1005.

(2) The commission may adopt rules necessary to administer and implement the low income telephone assistance program and to receive matching federal low income telephone assistance.

History: En. Sec. 4, Ch. 391, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-3-1005. Annual reports. The commission shall, if necessary, provide the federal communications commission with annual reports containing the following information:

(1) a description of qualification and verification procedures and other assistance measures;

(2) the costs of the low income telephone assistance program;

(3) the number of households receiving low income telephone assistance;

(4) the number of eligible subscribers receiving low income telephone assistance, including subscribers who switched from other telephone services to low income telephone service and new subscribers of low income telephone service; and

(5) all other information requested by the federal communications commission concerning the effect of the low income telephone assistance program on eligible subscribership levels.

History: En. Sec. 5, Ch. 391, L. 1987.

69-3-1006. Federal requirements. The public service commission, the department of public health and human services, and participating providers of local telecommunications services shall comply with federal requirements for the receipt of matching federal low income telephone assistance.

History: En. Sec. 6, Ch. 391, L. 1987; amd. Sec. 520, Ch. 546, L. 1995.

69-3-1007. Applicability — voluntary participation or withdrawal. (1) Sections 69-3-1001 through 69-3-1006 apply to providers of regulated local telecommunications services with more than 50,000 subscribers.

(2) Regulated providers of local telecommunications services with fewer than 50,000 subscribers may petition the public service commission to participate in or withdraw from the low income telephone assistance program. The public service commission shall grant a petition to participate in or withdraw from the low income telephone assistance program unless federal requirements for obtaining matching federal low income telephone assistance require otherwise.

History: En. Sec. 7, Ch. 391, L. 1987.

Part 11 reserved

Part 12

Integrated Least-Cost Resource Planning and Acquisition Act

Part Cross-References

Montana Major Facility Siting Act, Title 75, ch. 20.

69-3-1201. Short title. This part may be cited as the "Montana Integrated Least-Cost Resource Planning and Acquisition Act".

History: En. Sec. 1, Ch. 157, L. 1993.

69-3-1202. Policy — planning. (1) It is the policy of the state of Montana to supervise, regulate, and control public utilities. To the extent that it is consistent with the policy and in order to benefit society, the state encourages efficient utility operations, efficient use of utility services, and efficient rates. It is further the policy of the state to encourage utilities to acquire resources in a manner that will help ensure a clean, healthful, safe, and economically productive environment.

(2) The legislature finds that the commission may include in rates the costs that are associated with acquiring the resources referred to in subsection (1) and that are consistent with this policy if the resources are actually used and useful for the convenience of the public. To advance this policy, the commission may require periodic long-range plans from utilities that provide electric and natural gas service in a form and manner determined by the commission. The commission may receive comments on the plans.

(3) This part does not constrain or limit the commission's existing statutory duties or responsibilities.

History: En. Sec. 2, Ch. 157, L. 1993.

69-3-1203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Abandonment costs" means the costs incurred for resources acquired and abandoned pursuant to a plan.

(2) "Consumer counsel" means the consumer counsel provided for in 5-15-201.

(3) "Externalities" mean the impacts on society that are not directly borne by the producer in production and delivery activities, which due to imperfections in or the absence of markets are not accounted for in the producer's production and pricing decisions.

(4) "Plan" means an integrated least-cost resource plan submitted by a utility in accordance with this part and the rules adopted under this part.

(5) "Planning costs" means the costs of evaluating the future demand for services and of evaluating alternative methods of satisfying future demand.

(6) "Portfolio development costs" means the costs of preparing a resource in a portfolio for prompt and timely acquisition of the resource.

(7) "Public utility" means a public utility, as defined in 69-3-101, that provides electric or natural gas service. The term does not include municipal utilities.

History: En. Sec. 3, Ch. 157, L. 1993.

69-3-1204. Integrated least-cost plan. (1) The commission may adopt rules requiring a public utility to prepare and file a plan for meeting the requirements of its customers in the most cost-effective manner consistent with the public utility's obligation to serve. The rules may prescribe the content and the time for filing a plan.

(2) A plan must contain but is not limited to an evaluation of the full range of cost-effective means for the public utility to meet the service requirements

of its Montana customers, including conservation or similar improvements in the efficiency by which services are used.

(3) The commission may adopt rules providing guidelines to be used in preparing a plan and identifying the criteria to be used in determining cost-effectiveness. The criteria may include externalities associated with the acquisition of a resource by a public utility. The rules must establish the minimum filing requirements for acceptance of a plan by the commission for further review. If a plan does not meet the minimum filing requirements, it must be returned to the public utility with a list of deficiencies. A corrected plan must be submitted within the time established by the commission.

(4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the department of environmental quality and the consumer counsel.

History: En. Sec. 4, Ch. 157, L. 1993; amd. Sec. 173, Ch. 418, L. 1995.

69-3-1205. Public comment. (1) The commission shall conduct a public meeting for the purpose of receiving comment on a plan. The commission or the department of public service regulation may comment on the plan. A comment by the commission or the department may not be construed as preapproval by the commission of rate treatment for any proposed resource.

(2) The department of environmental quality:

(a) shall review a plan and comment on the need for new resources, the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related issues that it considers important. The department shall coordinate and deliver all comments from other executive branch agencies.

(b) may use a plan in the development of studies for a specific energy facility for which an application for a certificate of environmental compatibility and public need is submitted under Title 75, chapter 20.

(3) The consumer counsel shall review and may comment on a plan.

History: En. Sec. 5, Ch. 157, L. 1993; amd. Sec. 174, Ch. 418, L. 1995.

69-3-1206. Rate treatment. (1) The commission may include in a public utility's rates:

(a) the cost of resources acquired in accordance with a plan;

(b) the cost-effective expenditures for improving the efficiency with which the public utility provides and its customers use utility services; and

(c) the costs of complying with the planning requirements of this part, including but not limited to:

(i) planning costs;

(ii) portfolio development costs; and

(iii) all or a portion of abandonment costs.

(2) The commission shall adopt rules establishing criteria governing the extent of recovery of abandonment costs.

History: En. Sec. 6, Ch. 157, L. 1993.

Part 13

Change in Customer's Telecommunications Carrier

Part Compiler's Comments

Effective Date: Section 8, Ch. 325, L. 1997, provided: "[This act] [69-3-1301 through 69-3-1305] is effective on passage and approval." Approved April 21, 1997.

69-3-1301. Purpose. The purpose of this part is to prohibit telecommunications carriers, including carriers not otherwise regulated by the commission, from switching a customer's telecommunications services from one telecommunications carrier to another without the customer's consent.

History: En. Sec. 1, Ch. 325, L. 1997.

69-3-1302. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the public service commission provided for in 2-15-2602.

(2) "Customer" means a person who has purchased telecommunications services from a telecommunications carrier.

(3) "Local exchange company" means the same as provided in 53-19-302.

(4) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long-distance services.

(5) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services is considered a telecommunications carrier only to the extent that the person is engaged in providing telecommunications services. The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

History: En. Sec. 2, Ch. 325, L. 1997.

69-3-1303. Prohibition — exceptions. (1) A telecommunications carrier may not honor a request by any person other than a customer to change the customer's primary interexchange carriers or local exchange company except:

(a) when the requesting carrier has obtained from the customer a document signed by the customer that contains clear and conspicuous disclosure of the customer's request for a change in telecommunications carrier;

(b) when the customer affected by the change initiates the contact with the carrier in order to request the change; or

(c) when the carrier who has initiated the change has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) must be signed by the customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

History: En. Sec. 3, Ch. 325, L. 1997.

69-3-1304. Rulemaking authority. The commission may adopt rules to implement this part.

History: En. Sec. 4, Ch. 325, L. 1997.

69-3-1305. Telecommunications carrier liability — penalty for violation. (1) A telecommunications carrier who initiates an unauthorized change in the customer's telecommunications carrier in violation of 69-3-1303 is liable:

(a) to the customer for all intrastate long-distance charges, interstate long-distance charges, monthly service charges, carrier switching fees, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) to the customer's original telecommunications carrier for all charges related to reinstating service to the customer.

(2) A telecommunications carrier who purposely or knowingly initiates an unauthorized change of a customer's telecommunications carrier under 69-3-1303 is guilty of a misdemeanor and shall be punished as provided in 46-18-212.

(3) The remedies provided by this section are in addition to any other remedies available by law.

History: En. Sec. 5, Ch. 325, L. 1997.

Part 14

Natural Gas Utility Restructuring and Customer Choice Act

Part Compiler's Comments

Retroactive Applicability: Section 10(2), Ch. 506, L. 1997, provided: "[This act] [69-3-1401 through 69-3-1409] applies retroactively, within the meaning of 1-2-109, to restructuring filings filed with the public service commission after June 1, 1996."

Effective Date: Section 14, Ch. 506, L. 1997, provided: "[This act] [69-3-1401 through 69-3-1409] is effective on passage and approval." Approved May 2, 1997.

69-3-1401. Short title. This part may be cited as the "Natural Gas Utility Restructuring and Customer Choice Act".

History: En. Sec. 1, Ch. 506, L. 1997.

69-3-1402. Definitions. As used in this part, the following definitions apply:

(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas transmission facilities, storage facilities, or distribution facilities.

(2) "Distribution facilities" means those facilities that are not transmission facilities:

(a) by and through which natural gas is received from a transmission services provider and transmitted to the customer; and

(b) operated by a distribution services provider.

(3) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of natural gas to the public.

(4) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the state of Montana.

(5) "Natural gas utility" means a utility regulated by the commission on May 2, 1997, that provides natural gas services to the public.

(6) "Open access" means that a natural gas utility has made its transmission facilities, storage facilities, or distribution facilities available to all natural gas suppliers, transmission services providers, distribution services providers, and customers on a nondiscriminatory and comparable basis.

(7) "Performance-based ratemaking" means those forms of regulation that include but are not limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies, release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers. A performance-based regulation may also include a mechanism for automatic annual adjustments of revenue to prices to reflect changes in any index adopted for the implementation of the performance-based form of regulation.

(8) "Storage facilities" means those facilities that are owned, controlled, or operated by a person offering storage service for natural gas and generally means any underground reservoir suitable for the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that underground reservoir.

(9) "Transition costs" means:

(a) a natural gas utility's net, verifiable production- and gathering-related costs, including costs of capital, that become unrecoverable as a result of customer choice and open access. These costs include but are not limited to:

(i) regulatory assets and deferred charges that exist as a result of current regulatory practices and that may be accounted for up to the point in time that the commission issues a final order in a docket addressing transition costs, including all costs, expenses, and fees related to the issuance of transition bonds;

(ii) the above-market costs associated with existing gas supply commitments;

(iii) other natural gas utility investments rendered uneconomic as a result of implementation of customer choice and open access;

(iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts; and

(v) the costs associated with the issuance of any related transition bonds authorized by the commission pursuant to 69-3-1403.

(b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(10) "Transmission facilities" means those facilities owned, controlled, and operated by a transmission services provider that are used to transport natural gas from a gathering line or storage facility to a distribution facility, storage facility, or end-use customer.

(11) "Transmission services provider" means a person controlling or operating transmission facilities.

(12) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customers share of universal system benefits program costs.

(13) "Universal system benefits programs" means public purpose programs for cost-effective local energy conservation, low-income weatherization, and low-income energy bill assistance.

History: En. Sec. 2, Ch. 506, L. 1997.

69-3-1403. Customer choice. (1) A natural gas utility may voluntarily offer its customers choice of natural gas supplier and provide open access to its transmission facilities, storage facilities, or distribution facilities.

(2) If a customer choice offering results in transition costs, the commission may allow those transition costs to be recovered in separate identifiable charges to customers. Upon commission approval, the natural gas utility must have the opportunity but not the obligation to finance the fixed transition costs and related financing costs using transition cost financing as provided for in 69-8-103 and 69-8-503.

History: En. Sec. 3, Ch. 506, L. 1997.

69-3-1404. Functional separation — code of conduct — emergency services — customer protection. (1) A natural gas utility that provides customer choice and open access on its system shall:

(a) functionally separate its natural gas production and gathering from its natural gas transmission, storage, and distribution services and remove natural gas production and gathering from the rate base;

(b) adopt and comply with commission-approved standards of conduct to be included in a tariff to govern its natural gas transmission, storage, and distribution services; and

(c) provide emergency natural gas supply and related services to the extent necessary to maintain the operational integrity of the transmission system as determined by the commission.

(2) The commission shall develop standards that protect consumers and natural gas suppliers from anticompetitive and abusive practices.

(3) This part does not reduce or otherwise change the authority of the commission to review the prudence of natural gas purchases made by a natural gas utility for its customers that do not have a choice or that have not made a choice of natural gas suppliers or have not been assigned a natural gas supplier.

History: En. Sec. 4, Ch. 506, L. 1997.

69-3-1405. Licensing — procedures — commission rulemaking. (1) The commission shall license natural gas suppliers and enforce licensing provisions pursuant to this section.

(2) A natural gas supplier shall file an application with and obtain a license from the commission to sell natural gas to customers in the state of Montana.

(3) A licensee shall:

(a) provide copies of all license applications to the commission and to all distribution services providers; and

(b) update information and file annual reports.

(4) A license application becomes effective 30 days after filing with the commission, unless the commission rejects the application during that period. If the commission rejects a license application, the commission shall specify the reasons in writing and, if practical, shall identify alternative ways to overcome deficiencies.

(5) The commission shall promulgate rules requiring licensing information that identifies the licensee and ensures that the natural gas supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(6) The commission may require proof of a licensees financial integrity and a demonstration of adequate firm deliverability to meet load requirements.

(7) Pursuant to its own investigation or upon the complaint of an affected party, the commission may institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.

History: En. Sec. 5, Ch. 506, L. 1997.

69-3-1406. Reciprocity. (1) All natural gas suppliers are afforded the comparable opportunity to compete.

(2) A natural gas distribution services provider or its affiliates may not use another natural gas distribution services provider's facilities in the state of Montana to sell natural gas to customers in the state of Montana unless the natural gas distribution services provider or its affiliates offer customer choice and open access to their natural gas distribution facilities.

History: En. Sec. 6, Ch. 506, L. 1997.

69-3-1407. Optional performance-based ratemaking for natural gas utilities — commission rulemaking. (1) The commission may, upon application and after giving notice and conducting a hearing as provided in 69-3-303, authorize any natural gas utility to implement an optional form of rate regulation using a performance-based ratemaking methodology.

(2) The commission may approve a performance-based ratemaking methodology if it finds that the methodology:

(a) preserves adequate service to all classes of customers, including transportation-only customers;

(b) does not unreasonably prejudice or disadvantage any class of natural gas utility users;

(c) provides incentives for improved performance by the natural gas utility in the natural gas utility's public duties;

(d) results in rates that are not excessive; and

(e) is in the public interest.

(3) The commission may, after giving notice and conducting a hearing as provided in 69-3-303, modify or discontinue a natural gas utility's performance-based ratemaking previously authorized under this section if the commission finds that:

(a) natural gas service to one or more classes of customers has deteriorated or will deteriorate;

(b) any class of natural gas utility customer is being unreasonably prejudiced or disadvantaged;

(c) the performance-based ratemaking is not providing or will not provide reasonable incentives for improved performance by a natural gas utility in the performance of its public duties;

(d) rates are excessive compared to a natural gas utility's cost of service;

(e) terms ordered by the commission in connection with the approval of a natural gas utility's implementation of performance-based ratemaking have been violated; and

(f) the performance-based form of regulation is not in the public interest.

(4) The commission shall promulgate rules for monitoring a natural gas utility that has implemented performance-based ratemaking to ensure that the natural gas utility is in compliance with the requirements of this section.

History: En. Sec. 7, Ch. 506, L. 1997.

69-3-1408. Universal system benefits programs — establishing nonbypassable rate. (1) A natural gas utility shall implement, upon commission approval, a universal system benefits program that considers existing universal system benefits programs in the state.

(2) The commission shall establish a universal system benefits charge that either all natural gas transmission services providers or all distribution services providers, or both, in the state of Montana shall charge to all end-use customers, taking into consideration the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed in other states. The method of assessing those rates may not disproportionately burden a large transmission services provider's customers. Within the universal system benefits charge, a natural gas utility's annual funding requirement for low-income weatherization and low-income energy bill assistance is established at 0.42% of a natural gas utility's annual revenue. A natural gas utility must receive credit for its internal programs or activities that qualify as universal system benefits programs.

(3) On or before July 1, 2002, the commission shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for universal system benefits programs. The determination should focus specifically on the existence of markets to provide for any of the universal system benefits programs or on whether other means for funding those universal system benefits programs have developed. These recommendations may also address how future reevaluations will be provided, if necessary.

History: En. Sec. 8, Ch. 506, L. 1997.

69-3-1409. Tax revenue analysis. (1) The revenue oversight committee, as provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously regulated natural gas suppliers that will enter the competitive market and shall report to the legislature on how revenue to the state or local government is changed by restructuring and competition.

(2) On or before November 30, 1998, the revenue oversight committee shall recommend to the 56th legislature legislative changes to address the establishment of comparable state and local taxation burdens on all market participants in the supply of natural gas.

History: En. Sec. 9, Ch. 506, L. 1997.

CHAPTER 4

UTILITY LINES AND FACILITIES

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Chapter Cross-References

Assessment of public utilities, 15-8-406, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Report of property by utilities to Department of Revenue, 15-23-301.

Montana Telecommunications Act, Title 69, ch. 3, part 8.

Eminent domain — utility lines as public use, 70-30-102.

Permissible easements for utilities, 76-6-203.

Reduction of slash along right-of-way of utility lines, 76-13-407.

Part 1
General Provisions

69-4-101. Use of public right-of-way for utility lines and facilities. A telegraph, telephone, electric light, or electric power line corporation or public body or any other person owning or operating such is hereby authorized to install its respective plants and appliances necessary for service and to supply and distribute electricity for lighting, heating, power, and other purposes and to that end, to construct such telegraph, telephone, electric light, or electric power lines, from point to point, along and upon any of the public roads, streets, and highways in the state, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires. The same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways, and nothing herein shall be so construed as to restrict the powers of city or town councils.

History: En. Sec. 1000, Civ. C. 1895; amd. Sec. 1, Ch. 55, L. 1905; amd. Sec. 1, Ch. 192, L. 1907; re-en. Sec. 4400, Rev. C. 1907; re-en. Sec. 6645, R.C.M. 1921; re-en. Sec. 6645, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1945; R.C.M. 1947, 70-301.

Cross-References

Local government provisions not to modify this section, 7-3-4302.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

Eminent domain — utility lines as public use, 70-30-102.

69-4-102. Underground power lines in new service areas. (1) As used in this section:

(a) "new service area" means any subdivision or group of newly constructed or newly installed dwellings (including mobile homes) or commercial buildings which, when occupied, will generate at least five contracts for the supply of electricity; and

(b) "lines used for the distribution of electricity" means all the distribution lines in the new service area through which electricity passes before it is utilized by the consumer and the consumer's dwelling or place of business.

(2) A firm, agency, or person exercising the rights conferred by 69-4-101 shall install underground all lines used for the distribution of electricity in a new service area when technically and economically feasible.

(3) The commission may make rules to implement this section.

History: En. 70-304 by Sec. 1, Ch. 125, L. 1974; R.C.M. 1947, 70-304.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Utility lines and facilities — definitions, 69-4-303, 69-4-401, 69-4-501.

Part 2

Construction Standards for Utility Lines and Facilities

69-4-201. Application of national electrical safety code. (1) The national electrical safety code standards govern all construction involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. Except as provided in 69-4-203, electrical construction of overhead and underground electrical supply and communication lines in the state must be in conformity with the rules set forth in the national electrical safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers. The national electrical safety code provides construction standards and must be enforced by the commission. Proof of compliance with the requirements of an applicable national electrical safety code standard establishes due care in the defense of a negligence claim alleging a violation of that standard.

(2) The commission shall adopt rules to implement and enforce this part. The commission shall adopt by rule standards for electrical safety. The standards must be based on standards published in the most recent edition of the national electrical safety code.

History: En. Sec. 25, Ch. 171, L. 1917; re-en. Sec. 2701, R.C.M. 1921; re-en. Sec. 2701, R.C.M. 1935; amd. Sec. 12, Ch. 137, L. 1941; R.C.M. 1947, 24-125; amd. Sec. 1, Ch. 516, L. 1979; amd. Sec. 1, Ch. 471, L. 1989; amd. Sec. 1, Ch. 212, L. 1993.

Cross-References

Electricians and electrical safety, Title 37, ch. 68.

Building construction standards — electrical installations, Title 50, ch. 60, part 6.

69-4-202. Repealed. Sec. 6, Ch. 516, L. 1979.

History: (1)En. Sec. 1, Ch. 194, L. 1939; amd. Sec. 1, Ch. 139, L. 1951; Sec. 24-142, R.C.M. 1947; (2)En. Sec. 2, Ch. 194, L. 1939; Sec. 24-143, R.C.M. 1947; (3)En. Sec. 3, Ch. 194, L. 1939; Sec. 24-144, R.C.M. 1947; R.C.M. 1947, 24-142, 24-143, 24-144; amd. Sec. 9, Ch. 43, L. 1979.

69-4-203. Scope of law. Section 69-4-201 shall not apply to:

(1) interstate railroad electrification construction except where the wires of the railroad cross or are crossed by wires belonging to others; and

(2) any electrical construction of any person using the construction for power wires where:

(a) the construction and wires and the power plant furnishing electricity therefor are wholly owned by this person and the electricity conducted thereby is produced and used solely by this person on his own premises and not sold or delivered to any other person off his premises;

(b) the wires or construction are not over or across any highway or public place or the property of others; and

(c) these wires have a potential of less than 450 volts between any phases.

History: En. Secs. 16, 18, Ch. 137, L. 1941; R.C.M. 1947, 24-140(part), 24-141; amd. Sec. 2, Ch. 516, L. 1979.

69-4-204. Regulation by local government. All ordinances or parts of ordinances of cities and towns in the state in conflict with the national electrical safety code are repealed. No ordinance in conflict with any provisions of the national electrical safety code may be enacted in any city or town in the state, and any such ordinance is void.

History: En. Sec. 35, Ch. 171, L. 1917; re-en. Sec. 2711, R.C.M. 1921; re-en. Sec. 2711, R.C.M. 1935; R.C.M. 1947, 24-135; amd. Sec. 10, Ch. 43, L. 1979; amd. Sec. 3, Ch. 516, L. 1979.

69-4-205. Violations. Every corporation or joint-stock company or individual which violates 69-4-201 is guilty of a misdemeanor.

History: En. Sec. 33, Ch. 171, L. 1917; re-en. Sec. 2709, R.C.M. 1921; re-en. Sec. 2709, R.C.M. 1935; R.C.M. 1947, 24-133; amd. Sec. 4, Ch. 516, L. 1979.

Cross-References

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Penalty for misdemeanor, 46-18-212.

69-4-206 through 69-4-210 reserved.

69-4-211 through 69-4-241. Repealed. Sec. 6, Ch. 516, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

69-4-211. En. Sec. 1, Ch. 171, L. 1917; re-en. Sec. 2677, R.C.M. 1921; re-en. Sec. 2677, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1941; R.C.M. 1947, 24-101.

69-4-212. En. Sec. 2, Ch. 171, L. 1917; re-en. Sec. 2678, R.C.M. 1921; re-en. Sec. 2678, R.C.M. 1935; amd. Sec. 2, Ch. 137, L. 1941; amd. Sec. 1, Ch. 45, L. 1949; R.C.M. 1947, 24-102.

69-4-213. En. Sec. 3, Ch. 171, L. 1917; re-en. Sec. 2679, R.C.M. 1921; re-en. Sec. 2679, R.C.M. 1935; amd. Sec. 3, Ch. 137, L. 1941; R.C.M. 1947, 24-103.

69-4-214. En. Sec. 4, Ch. 171, L. 1917; re-en. Sec. 2680, R.C.M. 1921; re-en. Sec. 2680, R.C.M. 1935; R.C.M. 1947, 24-104.

69-4-215. En. Sec. 5, Ch. 171, L. 1917; re-en. Sec. 2681, R.C.M. 1921; re-en. Sec. 2681, R.C.M. 1935; amd. Sec. 4, Ch. 137, L. 1941; R.C.M. 1947, 24-105.

69-4-216. En. Sec. 6, Ch. 171, L. 1917; re-en. Sec. 2682, R.C.M. 1921; re-en. Sec. 2682, R.C.M. 1935; amd. Sec. 5, Ch. 137, L. 1941; R.C.M. 1947, 24-106.

69-4-217. En. Sec. 7, Ch. 171, L. 1917; re-en. Sec. 2683, R.C.M. 1921; re-en. Sec. 2683, R.C.M. 1935; amd. Sec. 6, Ch. 137, L. 1941; amd. Sec. 1, Ch. 248, L. 1947; amd. Sec. 1, Ch. 344, L. 1971; R.C.M. 1947, 24-107.

69-4-218. En. Sec. 8, Ch. 171, L. 1917; re-en. Sec. 2684, R.C.M. 1921; re-en. Sec. 2684, R.C.M. 1935; R.C.M. 1947, 24-108.

69-4-219. En. Sec. 9, Ch. 171, L. 1917; re-en. Sec. 2685, R.C.M. 1921; re-en. Sec. 2685, R.C.M. 1935; amd. Sec. 7, Ch. 137, L. 1941; R.C.M. 1947, 24-109.

69-4-220. En. Sec. 10, Ch. 171, L. 1917; re-en. Sec. 2686, R.C.M. 1921; re-en. Sec. 2686, R.C.M. 1935; R.C.M. 1947, 24-110.

69-4-221. En. Sec. 11, Ch. 171, L. 1917; re-en. Sec. 2687, R.C.M. 1921; re-en. Sec. 2687, R.C.M. 1935; R.C.M. 1947, 24-111.

69-4-222. En. Sec. 12, Ch. 171, L. 1917; re-en. Sec. 2688, R.C.M. 1921; re-en. Sec. 2688, R.C.M. 1935; amd. Sec. 8, Ch. 137, L. 1941; R.C.M. 1947, 24-112.

69-4-223. En. Sec. 13, Ch. 171, L. 1917; re-en. Sec. 2689, R.C.M. 1921; re-en. Sec. 2689, R.C.M. 1935; R.C.M. 1947, 24-113.

69-4-224. En. Sec. 14, Ch. 171, L. 1917; re-en. Sec. 2690, R.C.M. 1921; re-en. Sec. 2690, R.C.M. 1935; amd. Sec. 9, Ch. 137, L. 1941; R.C.M. 1947, 24-114.

69-4-225. En. Sec. 15, Ch. 171, L. 1917; re-en. Sec. 2691, R.C.M. 1921; re-en. Sec. 2691, R.C.M. 1935; amd. Sec. 10, Ch. 137, L. 1941; R.C.M. 1947, 24-115.

69-4-226. En. Sec. 16, Ch. 171, L. 1917; re-en. Sec. 2692, R.C.M. 1921; re-en. Sec. 2692, R.C.M. 1935; amd. Sec. 11, Ch. 137, L. 1941; R.C.M. 1947, 24-116.

69-4-227. En. Sec. 17, Ch. 171, L. 1917; re-en. Sec. 2693, R.C.M. 1921; re-en. Sec. 2693, R.C.M. 1935; R.C.M. 1947, 24-117.

69-4-228. En. Sec. 18, Ch. 171, L. 1917; re-en. Sec. 2694, R.C.M. 1921; re-en. Sec. 2694, R.C.M. 1935; R.C.M. 1947, 24-118.

69-4-229. En. Sec. 19, Ch. 171, L. 1917; re-en. Sec. 2695, R.C.M. 1921; re-en. Sec. 2695, R.C.M. 1935; R.C.M. 1947, 24-119.

69-4-230. En. Sec. 20, Ch. 171, L. 1917; re-en. Sec. 2696, R.C.M. 1921; re-en. Sec. 2696, R.C.M. 1935; R.C.M. 1947, 24-120.

69-4-231. En. Sec. 21, Ch. 171, L. 1917; re-en. Sec. 2697, R.C.M. 1921; re-en. Sec. 2697, R.C.M. 1935; R.C.M. 1947, 24-121.

69-4-232. En. Sec. 22, Ch. 171, L. 1917; re-en. Sec. 2698, R.C.M. 1921; re-en. Sec. 2698, R.C.M. 1935; R.C.M. 1947, 24-122.

69-4-233. En. Sec. 23, Ch. 171, L. 1917; re-en. Sec. 2699, R.C.M. 1921; re-en. Sec. 2699, R.C.M. 1935; R.C.M. 1947, 24-123.

69-4-234. En. Sec. 24, Ch. 171, L. 1917; re-en. Sec. 2700, R.C.M. 1921; re-en. Sec. 2700, R.C.M. 1935; R.C.M. 1947, 24-124.

69-4-235. En. Sec. 26, Ch. 171, L. 1917; re-en. Sec. 2702, R.C.M. 1921; re-en. Sec. 2702, R.C.M. 1935; amd. Sec. 13, Ch. 137, L. 1941; amd. Sec. 2, Ch. 248, L. 1947; amd. Sec. 2, Ch. 45, L. 1949; R.C.M. 1947, 24-126.

69-4-236. En. Sec. 27, Ch. 171, L. 1917; re-en. Sec. 2703, R.C.M. 1921; re-en. Sec. 2703, R.C.M. 1935; R.C.M. 1947, 24-127.

69-4-237. En. Sec. 28, Ch. 171, L. 1917; re-en. Sec. 2704, R.C.M. 1921; re-en. Sec. 2704, R.C.M. 1935; R.C.M. 1947, 24-128.

69-4-238. En. Sec. 29, Ch. 171, L. 1917; re-en. Sec. 2705, R.C.M. 1921; re-en. Sec. 2705, R.C.M. 1935; R.C.M. 1947, 24-129.

69-4-239. En. Sec. 30, Ch. 171, L. 1917; re-en. Sec. 2706, R.C.M. 1921; re-en. Sec. 2706, R.C.M. 1935; R.C.M. 1947, 24-130.

69-4-240. En. Sec. 31, Ch. 171, L. 1917; re-en. Sec. 2707, R.C.M. 1921; re-en. Sec. 2707, R.C.M. 1935; R.C.M. 1947, 24-131.

69-4-241. En. Sec. 32, Ch. 171, L. 1917; re-en. Sec. 2708, R.C.M. 1921; re-en. Sec. 2708, R.C.M. 1935; R.C.M. 1947, 24-132.

Part 3

Underground Conversion of Utilities

Part Cross-References

Where wires may run — special improvement districts, 7-12-4102.

Power to require placement of utilities underground, 7-12-4132.

Permissible easements for utilities, 76-6-203.

69-4-301. Short title. This part shall be known and cited as the "Underground Conversion of Utilities Law".

History: En. Sec. 1, Ch. 429, L. 1971; R.C.M. 1947, 70-601.

69-4-302. Statement of findings and purpose. (1) The legislature finds that in many areas of the state, landowners, cities, towns, counties, rural electric cooperatives, and public utilities desire to convert existing overhead electric and communication facilities to underground locations by means of special improvement district proceedings.

(2) The legislature hereby declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken pursuant to this part, whether such areas be within the limits of a city or town or within a county.

History: En. Sec. 2, Ch. 429, L. 1971; R.C.M. 1947, 70-602.

Cross-References

Special improvement districts, Title 7, ch. 12, parts 21 and 41.

69-4-303. Definitions. As used in this part, the following words and phrases and any variations thereof shall have the following meaning:

(1) "Communication service" means the transmission of intelligence by electrical means, including but not limited to telephone, telegraph, messenger-call, clock, police, fire alarm, and traffic control circuits or the transmission of standard television or radio signals.

(2) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement

thereof with underground electric or communication facilities constructed at the same or different locations.

(3) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

(4) "Electrical service" means the distribution of electricity for heat, light, or power.

(5) "Governing body" means the board of county commissioners or city council, as may be appropriate, depending on whether the special improvement district is located in a county or within a city or town.

(6) "Ordinance" means resolution where the governing body acts by resolution and vice versa.

(7) "Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground.

(8) "Public utility" means any public or private person, corporation, or cooperative that provides electric or communication service to the public by means of electric or communication facilities and shall include any special improvement district that provides electric or communication service to the public by means of electric or communication facilities.

(9) "Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground.

History: En. Sec. 3, Ch. 429, L. 1971; R.C.M. 1947, 70-603(part).

Cross-References

Alternative forms of local government, Title 7, ch. 3.

Utility lines and facilities — definitions, 69-4-401, 69-4-501.

69-4-304. Exclusion for high voltage transmission lines. Electric facilities shall not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 25,000 volts.

History: En. Sec. 3, Ch. 429, L. 1971; R.C.M. 1947, 70-603(part).

69-4-305. Effect on authority of public service commission. Nothing contained in this part shall vest any jurisdiction over any public utility in the governing body. The public service commission shall retain all jurisdiction now or hereafter conferred upon it by law.

History: En. Sec. 33, Ch. 429, L. 1971; R.C.M. 1947, 70-633; amd. Sec. 11, Ch. 43, L. 1979.

69-4-306 through 69-4-310 reserved.

69-4-311. Authorization to create special improvement districts. (1) The governing body of a county is authorized and empowered to create special improvement districts under Title 7, chapter 12, part 21, and this part, within the unincorporated portion of the county. The governing body of a city or town is authorized and empowered to create special improvement districts under Title 7, chapter 12, parts 41 and 42, and this part, within its territorial limits. The special improvement districts must provide for the conversion of existing overhead electrical and communication facilities to underground locations and the construction, reconstruction, or relocation of any other electric or communication facilities that may be incidental to the conversion.

(2) A special improvement district must include an area having a frontage of not less than 1,000 feet upon a public street, road, highway, or utilities easement along which overhead electric or communication facilities are located.

History: En. Sec. 4, Ch. 429, L. 1971; R.C.M. 1947, 70-604; amd. Sec. 5, Ch. 250, L. 1993.

Cross-References

Special improvement districts, Title 7, ch. 12, parts 21 and 41.

69-4-312. Procedure to initiate creation of district — resolution for feasibility study. (1) A governing body, on its own initiative or upon a petition signed by at least 60% of the property owners owning at least 60% of the assessable land of a proposed district requesting the creation of a special improvement district, as provided for in this part, may pass a resolution at a regular or special meeting, declaring that it finds that the special improvement district is in the public interest. The governing body shall make a finding that the formation of the special improvement district, for the purposes set out in this part, will promote the public convenience, necessity, and welfare.

(2) The resolution must state that the costs and expenses will be levied and assessed upon the property benefited and further request that each public utility serving the area by overhead electric or communication facilities shall, within 120 days after the receipt of the resolution, make a study of the cost of conversion of its facilities in the area to underground service. The report of the study must be provided to the governing body and made available for inspection in the office of the governing body and each public utility. The governing body may not pass a resolution of intention to create a special improvement district until it has received the report. The resolution of the governing body must require that each public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known, the description of the property and other matters as may be required by the public utilities in order to perform the work involved in the cost study. The resolution must further state the area in square feet of each lot or parcel within the proposed conversion service area.

History: En. Sec. 6, Ch. 429, L. 1971; R.C.M. 1947, 70-606; amd. Sec. 6, Ch. 250, L. 1993.

69-4-313. Cost and feasibility report. (1) The public utility report shall set forth an estimate of the total underground conversion costs and shall also indicate the costs of underground conversion of facilities of the public utility located within the boundaries of the various parcels or lots then receiving service. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed, insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district.

(2) The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district;

provided, that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new cost and feasibility report from the public utility concerned on the basis of the amended district. Should a delay result in a significant increase of the estimated conversion costs, new hearings shall be held on the creation of the district. In the event an increase of 10% or less results from delay, only the hearing on the assessments need be held again.

History: En. Sec. 7, Ch. 429, L. 1971; R.C.M. 1947, 70-607.

69-4-314. Determination of conversion costs. In determining the conversion costs included in the cost and feasibility report required by 69-4-313, the public utility is entitled to amounts sufficient to repay it for the following, as computed and reflected by the uniform system of accounts approved by the Montana public service commission, federal communications commission, or federal power commission or if the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of the public utility:

(1) the original costs less depreciation taken of the existing overhead electric and communication facilities to be removed;

(2) the estimated costs of removing the overhead electric and communication facilities less the salvage value of the facilities removed;

(3) if the estimated cost of constructing new underground facilities exceeds the estimated cost of constructing new aerial facilities, then the cost difference between the two;

(4) the cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for above ground facilities or where the preexisting easements are insufficient for the underground facilities.

History: En. Sec. 26, Ch. 429, L. 1971; amd. Sec. 8, Ch. 315, L. 1974; R.C.M. 1947, 70-626.

69-4-315 through 69-4-333. Repealed. Sec. 7, Ch. 250, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

69-4-315. En. Sec. 8, Ch. 429, L. 1971; R.C.M. 1947, 70-608.

69-4-316. En. Sec. 9, Ch. 429, L. 1971; R.C.M. 1947, 70-609.

69-4-317. En. Sec. 10, Ch. 429, L. 1971; R.C.M. 1947, 70-610; amd. Sec. 17, Ch. 526, L. 1983.

69-4-318. (1)En. Sec. 11, Ch. 429, L. 1971; Sec. 70-611, R.C.M. 1947; (2)En. Sec. 12, Ch. 429, L. 1971; Sec. 70-612, R.C.M. 1947; R.C.M. 1947, 70-611, 70-612(part).

69-4-319. En. Sec. 12, Ch. 429, L. 1971; R.C.M. 1947, 70-612(part).

69-4-320. En. Sec. 12, Ch. 429, L. 1971; R.C.M. 1947, 70-612(part).

69-4-321. En. Sec. 13, Ch. 429, L. 1971; R.C.M. 1947, 70-613.

69-4-322. En. Sec. 14, Ch. 429, L. 1971; R.C.M. 1947, 70-614.

69-4-323. En. Sec. 5, Ch. 429, L. 1971; R.C.M. 1947, 70-605.

69-4-324. En. Sec. 15, Ch. 429, L. 1971; R.C.M. 1947, 70-615.

69-4-325. En. Sec. 16, Ch. 429, L. 1971; R.C.M. 1947, 70-616; amd. Sec. 18, Ch. 526, L. 1983.

69-4-326. En. Sec. 17, Ch. 429, L. 1971; R.C.M. 1947, 70-617.

69-4-327. En. Sec. 18, Ch. 429, L. 1971; R.C.M. 1947, 70-618.

69-4-328. (1)En. Sec. 19, Ch. 429, L. 1971; Sec. 70-619, R.C.M. 1947; (2)En. Sec. 20, Ch. 429, L. 1971; Sec. 70-620, R.C.M. 1947; R.C.M. 1947, 70-619, 70-620.

69-4-329. En. Sec. 23, Ch. 429, L. 1971; R.C.M. 1947, 70-623.

69-4-330. En. Sec. 21, Ch. 429, L. 1971; R.C.M. 1947, 70-621.

69-4-331. En. Sec. 22, Ch. 429, L. 1971; R.C.M. 1947, 70-622.

69-4-332. En. Secs. 24, 25, Ch. 429, L. 1971; R.C.M. 1947, 70-624, 70-625(part); amd. Sec. 16, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 129, Ch. 370, L. 1987.

69-4-333. En. Sec. 25, Ch. 429, L. 1971; R.C.M. 1947, 70-625(part).

69-4-334 through 69-4-350 reserved.

69-4-351. Maintenance and construction of converted facilities. The public utility shall have the duty to maintain, repair, and replace all underground facilities installed pursuant to this part. There shall be no competitive bidding as to the construction of the converted facilities since existing facilities are owned, maintained, and operated by the public utility and the continuity of service of the utility is essential, both of which make construction work by third persons impracticable. Therefore, the public utility concerned shall be responsible for the accomplishment of all construction work and may contract out such of the construction work as it deems desirable.

History: En. Sec. 27, Ch. 429, L. 1971; R.C.M. 1947, 70-627(part).

69-4-352. Title to converted facilities. Title to the converted facilities shall be at all times solely and exclusively in the public utility involved, as the public is only purchasing the intangible benefits which come from converted facilities; that is, the removal of the overhead facilities and replacement by underground facilities.

History: En. Sec. 27, Ch. 429, L. 1971; R.C.M. 1947, 70-627(part).

69-4-353. Conversion of facilities on public property — notice to landowners. (1) Upon completion of the conversion of the overhead electric or communication facilities on public lands and right-of-way to underground, the public utility shall file a verified statement of the costs of such conversion with the governing body.

(2) The governing body shall mail to each landowner and purchaser of property under contract for deed a notice stating that:

(a) service from the underground facilities is available;

(b) the landowner has 60 days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on his lot or parcel to underground service facilities; and

(c) after the 60-day period following the date of the mailing of the notice, the governing body will order the public utility to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area.

History: En. Sec. 28, Ch. 429, L. 1971; R.C.M. 1947, 70-628; amd. Sec. 19, Ch. 526, L. 1983.

Cross-References

Notice to purchaser of property under contract for deed, 70-20-115.

69-4-354. Conversion of facilities on private property. (1) Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made, at the expense of the landowner, by the public utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs, or ordinances. The public utility shall not be required to convert service lines on property, other than public lands and right-of-way, until the landowner furnishes to the public utility a permit or easement authorizing the public utility and its employees, agents, and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.

(2) Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the public utility shall file with the governing body a verified statement of the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter, the governing body shall mail to each landowner a copy of such verified statement, which shall be due and payable within 30 days or as otherwise provided by the public utility.

History: En. Sec. 29, Ch. 429, L. 1971; R.C.M. 1947, 70-629.

Cross-References

Easements, Title 70, ch. 17, part 1.

69-4-355. Procedure upon failure to effect conversion on private property. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in 69-4-354 or if such an owner fails to convert to underground service facilities within 60 days after the mailing to him of the notice provided by 69-4-353, the governing body shall order the public utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to such structure or improvement.

History: En. Sec. 30, Ch. 429, L. 1971; R.C.M. 1947, 70-630.

69-4-356. Payment of public utility. (1) Upon completion of the conversion contemplated by this part, the public utility shall present the governing body with its verified bill for conversion costs as computed pursuant to 69-4-314, but based upon the actual cost of constructing the underground facility rather than the estimated cost of the facility. In the event the conversion costs are less than the estimated conversion costs, each assessed owner within the improvement district shall receive the benefit, prorated in such form and at such time or times as the governing body may determine. The bill of the public utility shall be paid within 30 days by the governing body from the improvement district funds or such other source as is properly designated by the governing body.

(2) In determining the actual cost of constructing the underground facility, the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the federal communications commission, federal power commission, or Montana public service commission and as is in use at the time of the conversion by the public utility involved.

History: En. Sec. 31, Ch. 429, L. 1971; R.C.M. 1947, 70-631.

69-4-357. Prohibition on reinstallation of overhead facilities. Once removed, no overhead electric or communication facilities shall be installed in a special improvement district for conversion of overhead electric and communication facilities, except as authorized by this part.

History: En. Sec. 32, Ch. 429, L. 1971; R.C.M. 1947, 70-632.

69-4-358. Postponement of conversion until certain actions occur. If a special improvement district is established pursuant to this part, the public utility involved shall not be required to commence conversion until the ordinance, the assessment roll, and the issuance of bonds have become final and until no civil action has been filed or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

History: En. Sec. 35, Ch. 429, L. 1971; R.C.M. 1947, 70-635.

Part 4

Relocation of Overhead Utility Lines

Part Cross-References

Relocation of utilities' facilities, 60-4-402.

Eminent domain — public uses enumerated, 70-30-102.

69-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural improvement" includes, without limitation, sprinkler irrigation systems.

(2) "Overhead utility line" means a facility for the transmission or distribution of electricity or telephone messages along wires or cables suspended above the ground between single or double poles and their respective anchors.

History: En. 24-201 by Sec. 1, Ch. 123, L. 1975; R.C.M. 1947, 24-201.

Cross-References

Utility lines and facilities — definitions, 69-4-303, 69-4-501.

69-4-402. Petition for relocation of overhead line. An owner of agricultural land across which an overhead utility line has been constructed may petition the district court for an order for relocation of the line for the purpose of installing an agricultural improvement. The petition shall set forth the nature of the proposed agricultural improvement, the increase in productivity of the land anticipated to result from the improvement, and a feasible alternative route, across other land to be provided by the petitioner at no cost to the owner of the overhead utility line.

History: En. 24-202 by Sec. 2, Ch. 123, L. 1975; R.C.M. 1947, 24-202.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

69-4-403. Hearing and order. The district court shall, upon notice to the owner of the overhead utility line, hear evidence bearing upon the matters presented in the petition. If the evidence establishes a substantial improvement in agricultural productivity and the feasibility of the relocated route, the court shall grant or modify and grant, as modified, the petition and order the owner of the line to relocate the line.

History: En. 24-203 by Sec. 3, Ch. 123, L. 1975; R.C.M. 1947, 24-203.

69-4-404. Costs of relocation. The costs of relocating an overhead utility line as ordered under 69-4-403 must be paid by the owner of the land.

History: En. 24-204 by Sec. 4, Ch. 123, L. 1975; R.C.M. 1947, 24-204; amd. Sec. 1, Ch. 141, L. 1993.

Part 5

Excavations Near Underground Facilities

69-4-501. Definitions. The following definitions apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

(a) alleviate a condition that constitutes a clear and present danger to life or property; or

(b) repair a customer outage involving a previously installed utility-owned facility.

(3) "Emergency locate" means a locate and mark that is requested for:

(a) a condition that constitutes a clear and present danger to life or property; or

(b) a customer outage for which repairs on a previously installed utility-owned facility are required.

(4) "Excavation" means an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

(5) "Excavator" means a person conducting the excavation activities defined in subsection (4).

(6) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(7) "Locatable underground facility" means an underground facility that can be field-located and field-marked with reasonable accuracy.

(8) "Locate" means to use specialized equipment to identify the location of underground facilities or the actual location of underground facilities identified by the use of specialized equipment.

(9) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location or absence of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific type of underground facility and the width of the facility if it is greater than 6 inches.

(10) "One-call notification center" means a service through which a person may request a locating and marking of underground facilities.

(11) "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency, and includes a trustee, receiver, assignee, or personal representative of the listed entities.

(12) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both sides of an underground facility.

(13) "Underground facility" means a facility buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, fiber optics, electric energy, oil, gas, or other substances. The term includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items.

History: **En. Sec. 1, Ch. 180, L. 1971; R.C.M. 1947, 32-4801; amd. Sec. 1, Ch. 286, L. 1991; amd. Sec. 1, Ch. 179, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 179 in definition of business day, after "Sunday", substituted New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day" for "or a legal local, state, or federal holiday"; substituted definition of emergency excavation for definition of emergency that read: ""Emergency" means:

(a) any condition that constitutes a clear and present danger to life or property; or

(b) a customer outage"; inserted definitions of emergency locate, excavator, and locate; in definition of locatable underground facility, before "field-marked", inserted "field-located and"; in definition of one-call notification center, before "marking", inserted "locating and"; and made minor changes in style.

Cross-References

Utility lines and facilities — definitions, 69-4-303, 69-4-401.

69-4-502. Information to be sought before excavation — notification — exceptions. (1) (a) Except as provided in subsection (1)(b), an excavator may not make or begin an excavation without first obtaining information concerning the possible location of an underground facility from each public utility, municipal corporation, underground facility owner, or other person having the right to bury underground facilities that is a member of a one-call notification center pursuant to subsection (2)(a).

(b) (i) A registered land surveyor or a person under the supervision of a registered land surveyor may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a highway or at the intersection of the center lines of public streets.

(ii) The registered land surveyor, prior to hand digging, shall obtain proper approval from the appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference the monument upon exposure.

(iii) The governing authority is not liable for any damages caused or suffered by the registered land surveyor or any person under the supervision of the registered land surveyor.

(iv) The registered land surveyor is liable for damages incurred regarding facility destruction.

(v) A public utility, municipal corporation, underground facility owner, or other person having the right to bury underground facilities is not liable for any damages suffered by the registered land surveyor or any person under the control of the registered land surveyor.

(2) (a) A public utility, municipal corporation, underground facility owner, or person having the right to bury underground facilities must be a member of a one-call notification center covering the service area in which the entity or person has underground facilities.

(b) Subsection (2)(a) does not apply to an owner or occupant of real property where underground facilities are buried if the facilities are used solely to furnish services or commodities to that property and no part of the facilities is located in a public street, alley, or right-of-way dedicated to the public use.

History: (1)En. Sec. 2, Ch. 180, L. 1971; Sec. 32-4802, R.C.M. 1947; (2)En. Sec. 3, Ch. 180, L. 1971; Sec. 32-4803, R.C.M. 1947; R.C.M. 1947, 32-4802, 32-4803(part); amd. Sec. 2, Ch. 286, L. 1991; amd. Sec. 1, Ch. 393, L. 1993; amd. Sec. 2, Ch. 179, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 179 in (1)(a), near beginning after "subsection (1)(b)", substituted "an excavator" for "a person", after "excavation" deleted "in a public street, alley, right-of-way dedicated to the public use, or utility easement", after "corporation" inserted "underground facility owner", and at end substituted "that is a member of a one-call notification center pursuant to subsection (2)(a)" for "within the public street, alley, right-of-way, or utility easement"; in (1)(b)(iv), after "regarding", substituted "facility" for "utility"; in (1)(b)(v), after "corporation", inserted "underground facility owner" and after "facilities" deleted "within the public street, alley, right-of-way, or utility easement"; deleted former (2) that read: "(2) Every public utility, municipal corporation, or other person having the right to bury underground facilities shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained unless a one-call notification center is available"; adjusted subsection references; and made minor changes in style.

Cross-References

County Clerk and Recorder, Title 7, ch. 4, part 26.

Professional land surveyors, Title 37, ch. 67.

69-4-503. Notification — locating and marking. (1) Before beginning an excavation, the excavator shall notify, through a one-call notification center, all owners of underground facilities in the area of the proposed excavation.

(2) After an excavator has notified the appropriate one-call notification center of a proposed excavation, an owner of an underground facility shall:

(a) provide the locates and mark the location within 2 business days; or

(b) respond immediately if the excavator notifies the one-call notification center that an emergency exists.

(3) (a) After an owner of an underground facility has located and marked the underground facilities, the excavator shall determine if weather, time, or other factors may have affected location marks, warranting relocation of the facilities.

(b) If excavation has not occurred within 30 days of the locate and mark, the excavator shall request that the facility be relocated and remarked before excavating unless other arrangements have been made with the underground facility owner. The excavator is responsible for costs associated with relocating and remarking a facility that is not excavated within 30 days of the locate and mark.

(4) Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to the owner's locatable underground facilities by surface locating and marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of the facilities shall provide the excavator with the best available information as to their locations. An excavator may not excavate until all known facilities have been located and marked. An excavator is not responsible for damages to an underground facility that cannot be located by its owner. Once the facilities are located and marked by the facility owner, the excavator is responsible for maintaining the markings.

(5) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business days by locating and marking the facility or by

notifying the excavator that locating and marking is unnecessary. An excavator may not begin excavating before the locating and marking is complete or before the excavator is notified that locating and marking is unnecessary.

(6) An excavator shall locate and mark the area to be excavated if requested by the facility owner or the owner's representative. If an excavator discovers an underground facility that has not been located and marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or the one-call notification center.

(7) An underground facility owner may attempt to identify the location of a private underground facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate.

History: En. Sec. 3, Ch. 180, L. 1971; R.C.M. 1947, 32-4803(part); amd. Sec. 1, Ch. 43, L. 1983; amd. Sec. 3, Ch. 286, L. 1991; amd. Sec. 3, Ch. 179, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 179 in (1), at beginning, deleted "At least 2 but not more than 10 business days", at end deleted "of the scheduled commencement of the excavation", and deleted second sentence that read: "If a one-call notification center service is not available, notice must be provided individually to the owners of underground facilities within the area of the proposed excavation"; inserted (2) and (3) regarding facility owner obligations upon being notified of a proposed excavation; in (4), in first sentence after "surface", inserted "locating and", in third sentence, at end before "marked", inserted "located and", inserted fourth sentence regarding excavator responsibility for damages, and in fifth sentence, after "facilities are", inserted "located and"; in (5), in first sentence after "days by", inserted "locating and" and after "facility" inserted "or by notifying the excavator that locating and marking is unnecessary" and in second sentence, after "before the" inserted "locating and" and after "notified that" inserted "locating and"; in (6) substituted first sentence regarding location and marking by an excavator upon request for former sentence that read: "A facility owner may request the excavator to mark the area to be excavated" and in second sentence, after "discovers an", substituted "underground facility that has not been located and marked" for "unmarked underground facility"; inserted (7) regarding liability of a facility owner for accuracy of a locate; and made minor changes in style.

69-4-504. Information to be part of architects' and engineers' plans.

(1) Architects and engineers designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information from the owners of underground facilities and then make the information a part of the plan by which the contractors operate. The owners of the underground facilities shall make available all records showing the locations of underground facilities and shall provide locates, if requested, pursuant to 69-4-503.

(2) This section does not excuse a person from the obligation imposed by 69-4-502(1).

History: En. Sec. 8, Ch. 180, L. 1971; R.C.M. 1947, 32-4808; amd. Sec. 2, Ch. 43, L. 1983; amd. Sec. 4, Ch. 286, L. 1991; amd. Sec. 4, Ch. 179, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 179 in (1), at end of second sentence, substituted "make available all records showing the locations of underground facilities and shall provide locates, if requested, pursuant to 69-4-503" for "provide substantially the same information as required by 69-4-503"; and made minor changes in style.

Cross-References

Architecture, Title 37, ch. 65.

Engineers, Title 37, ch. 67.

69-4-505. Liability for damages to underground facilities.

(1) If any underground facility is damaged by any person who has failed to obtain information as to its location as provided in 69-4-503, then such person shall

be liable to the owner of the underground facility for the entire cost of the repair of such facility.

(2) If information requested pursuant to 69-4-503 is not provided within the time specified therein, any person damaging or injuring underground facilities shall not be liable for such damage or injury, unless caused by his negligence.

(3) The act of obtaining information as required by this part shall not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such person from liability for any damage or injury resulting from his negligence.

History: (1)En. Sec. 4, Ch. 180, L. 1971; Sec. 32-4804, R.C.M. 1947; (2)En. Sec. 5, Ch. 180, L. 1971; Sec. 32-4805, R.C.M. 1947; (3)En. Sec. 6, Ch. 180, L. 1971; Sec. 32-4806, R.C.M. 1947; R.C.M. 1947, 32-4804, 32-4805, 32-4806.

Cross-References

Damages, Title 27, ch. 1, part 2.

Liability, Title 27, ch. 1, part 7.

69-4-506. Repealed. Sec. 6, Ch. 179, L. 1997.

History: En. Sec. 7, Ch. 180, L. 1971; R.C.M. 1947, 32-4807.

69-4-507. Public authority — liability. A public authority, as defined in 18-1-201, that has jurisdiction over a right-of-way is not liable for improper or unauthorized installations made by persons or entities other than the public authority or those acting at its discretion.

History: En. Sec. 5, Ch. 286, L. 1991.

Cross-References

Governmental liability and insurance covering liability, Title 2, ch. 9.

69-4-508. Emergency location and excavation. (1) When an emergency excavation is required, the excavator shall notify the one-call notification center. An underground facility owner shall respond as soon as is practical after notification.

(2) Requesting an emergency locate or an emergency excavation that is not an emergency locate or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and is subject to the penalties under 45-7-204.

History: En. Sec. 5, Ch. 179, L. 1997.

69-4-509 and 69-4-510 reserved.

69-4-511. Repealed. Sec. 6, Ch. 179, L. 1997.

History: En. Sec. 1, Ch. 184, L. 1987.

Part 6
Movement of Structures

69-4-601. Movement of structures and interference with wires — notice required. No person, firm, or corporation moving, hauling, or transporting any house, building, derrick, or other structure shall cut, move, raise, or in any manner interfere with an electric light or electric power wire or poles or with telephone or telegraph wires, cables, messenger wires, guy wires, or poles without giving notice to the owner or agent of said wires or poles, as hereinafter provided.

History: **En. Sec. 1, Ch. 55, L. 1929; re-en. Sec. 2711.1, R.C.M. 1935; amd. Sec. 1, Ch. 174, L. 1937; amd. Sec. 14, Ch. 137, L. 1941; R.C.M. 1947, 24-136.**

69-4-602. Procedure to give required notice. The person, firm, or corporation moving any house, building, derrick, or other structure shall give the person, firm, or corporation owning or operating the wires or poles, at their principal office and their nearest office within the state, not less than 10 days' written notice of the proposed time and place of moving a structure. The owner of the wires or poles shall give the mover a written estimate of the cost of cutting, raising, or moving the wires or poles at least 3 days prior to the move or within 10 days after receipt of the written notice of the move, whichever time comes sooner.

History: **En. Sec. 2, Ch. 55, L. 1929; re-en. Sec. 2711.2, R.C.M. 1935; R.C.M. 1947, 24-137; amd. Sec. 1, Ch. 442, L. 1983.**

69-4-603. Procedure to accomplish move. (1) In order to accomplish moving a house, building, derrick, or other structure through an area in which utility poles or wires impede the movement, it is the duty of the person, firm, or corporation who owns or controls the poles or wires and who has received the notice required by 69-4-602 to furnish competent workers to raise or cut the wires or move the poles as necessary to facilitate moving the house, building, derrick, or other structure.

(2) The necessary and reasonable expense of raising or cutting the wires or of moving the poles for utilities subject to the jurisdiction of the public service commission must be fixed and determined by the public service commission on the average cost per line or pole for time and materials expended. These costs and expenses must be reviewed biennially. Except as provided in subsections (4) and (5), the necessary and reasonable expense of raising or cutting the wires or of moving the poles must be shared equally by the person, firm, or corporation owning the structure and the person, firm, or corporation owning or operating the wires, cables, or poles required to be moved.

(3) The rates and charges of rural cooperative electric utilities, rural cooperative telephone utilities, and other persons who occupy and use utility or cooperative poles may not exceed the charges established by the public service commission for utilities subject to its jurisdiction. The charges assessed by utilities, other than utilities subject to the jurisdiction of the public service commission, must be apportioned as provided in subsection (2).

(4) (a) Except as provided in subsection (4)(b), to facilitate the movement of a house, building, derrick, or other structure, the necessary and reasonable costs of raising or cutting wires or cables or moving poles to facilitate the movement must be paid by the owner of:

(i) a prefabricated structure that is intended to be moved from the place of fabrication; or

(ii) the sixth and each subsequent structure that exceeds 25 feet in height while being moved and that is to be moved from a single site. When structures are moved in a group or in a continuous caravan formation and when only a single line cut or movement is necessary, the move must count as only a single-structure move for purposes of this subsection (4)(a)(ii). For the purposes of this subsection (4)(a)(ii), a single site includes but is not limited to a development complex, housing complex, military base, or institutional complex. The whole of an incorporated municipality is not a single site as the term is used in this subsection.

(b) The necessary and reasonable costs of raising or cutting wires or cables or moving poles to facilitate the movement of a structure by a person for occupancy by that person must be shared equally as provided in subsection (2).

(5) (a) A person, firm, or corporation who owns or moves a house, building, derrick, or other structure may not raise, cut, or in any way interfere with any poles or wires unless the person, firm, or corporation who owns or controls the poles or wires refuses, after having been notified as required by 69-4-602, to raise or cut the wires or move the poles.

(b) When the person who owns or controls the poles or wires refuses to raise or cut the wires or move the poles, the person, firm, or corporation who owns or moves the house, building, derrick, or other structure shall ensure that only competent and experienced workers raise or cut the wires or move the poles.

(c) The following procedure must be followed:

(i) The necessary and reasonable expense incurred by the owner or mover of the house, building, derrick, or other structure as a result of raising or cutting the wires or moving the poles must be paid by the owners of the poles or wires handled.

(ii) The work of raising or cutting the wires or moving the poles must be done in a careful manner.

(iii) The poles and wires must be promptly replaced and any damage to the poles or wires must be promptly repaired.

History: En. Sec. 3, Ch. 55, L. 1929; re-en. Sec. 2711.3, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1951; R.C.M. 1947, 24-138; amd. Sec. 2, Ch. 442, L. 1983; amd. Sec. 1, Ch. 551, L. 1995.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-4-604. Unlawful interference with lines. It shall be unlawful for any person, firm, or corporation engaged as principal or employee in moving any house, building, derrick, or other structure, as provided in this part, to move, touch, cut, molest, or in any way interfere with any electric light, electric power, telephone, or telegraph wires, cables, messenger wires, or guy wires or any poles bearing any such wires, except in compliance with the provisions of this part.

History: En. Sec. 4, Ch. 55, L. 1929; re-en. Sec. 2711.4, R.C.M. 1935; amd. Sec. 2, Ch. 174, L. 1937; amd. Sec. 15, Ch. 137, L. 1941; R.C.M. 1947, 24-139.

Cross-References

Misdemeanor — penalty when none specified, 46-18-212.

Parts 7 through 10 reserved

Part 11

Liability for Bypassing or Tampering With Meter

Part Cross-References

Theft of services, 45-6-305.

Obtaining communication services with intent to defraud, 45-6-306.

69-4-1101. Purpose — remedies cumulative. It is the purpose of this part to impose a substantial civil penalty upon those persons who, at the cost of their fellow citizens, obtain utility services at less than their true value through bypassing or tampering as defined in 69-4-1102. This part does not supersede or replace other remedies provided for in law or equity.

History: **En. Sec. 1, Ch. 678, L. 1985.**

69-4-1102. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Bypassing" means any act, using any means, the purpose of which is to obtain utility service without having such service pass through the authorized meter provided for measuring or registering such service.

(2) "Person" means an individual, firm, partnership, corporation, unincorporated association, or other legal or business entity or the executor, administrator, trustee, receiver, assignee, or personal representative thereof.

(3) "Tampering" means damaging, altering, adjusting, or in any manner interfering with or obstructing the operation or function of any authorized metering device provided for measuring or registering utility service.

(4) "Utility" means any public utility, municipally owned utility, or cooperative utility that provides electricity, gas, water, sewage disposal, or combination thereof, for sale to consumers.

(5) "Utility service" means the provision of electricity, gas, water, or sewer service.

History: **En. Sec. 2, Ch. 678, L. 1985.**

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-4-1103. Liability for bypass or tampering. (1) A person who bypasses or tampers, either for his own benefit or the benefit of another, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (2) precludes collection under this subsection.

(2) A person who receives utility services, knowing that the measurement of such services is being affected by bypassing or tampering, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (1) precludes collection under this subsection.

History: **En. Sec. 3, Ch. 678, L. 1985.**

69-4-1104. Action for recovery of reasonable value — penalty. A utility may institute a civil action against a person described in 69-4-1103 to recover the reasonable value of the services actually provided to the person. Upon a finding that such person is liable to the utility, the court may enter judgment against the person for up to three times the reasonable value of the utility's services actually provided and may award to the prevailing party its costs, including reasonable attorney fees, incurred in the action and the costs, including expert witness fees, of presenting such expert testimony as is reasonably necessary.

History: **En. Sec. 4, Ch. 678, L. 1985.**

Cross-References

Costs, Title 25, ch. 10.

CHAPTER 5

POWER AND ENERGY COMPANIES

Part 1 — Territorial Integrity for Electric Suppliers

69-5-101. Short title.
69-5-102. Definitions.
69-5-103. Repealed.
69-5-104. Continuation of electric service facilities to existing consumers.
69-5-105. Service to new consumers.
69-5-106. Electric service facilities to large customers.
69-5-107. Customer-owned facilities.
69-5-108. Agreements between electric facilities providers.
69-5-109. Special provisions for annexed areas.
69-5-110. Jurisdiction of district courts over disputes.
69-5-111. Judicial remedies.
69-5-112. Commission jurisdiction over agreements.

Chapter Cross-References

Assessment of public utilities, 15-8-406, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Exemption from corporate taxes, 15-31-102.

Financing statement — definitions and requirements, 30-9-409.

Perfection of security interest in transmitting utility's property, 30-9-409.

Relocation of utilities' facilities, 60-4-402.

Part 1

Territorial Integrity for Electric Suppliers

69-5-101. Short title. This part is known and may be cited as the "Territorial Integrity Act".

History: En. Sec. 1, Ch. 7, L. 1971; R.C.M. 1947, 70-501; amd. Sec. 34, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 at end deleted "of 1971"; and made minor changes in style. Amendment effective May 2, 1997.

69-5-102. Definitions. When used in this part, the following definitions apply:

(1) "Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana.

(3) "Electric facilities provider" means any utility that provides electric service facilities to the public.

(4) "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.

(5) "Electric utility" means a person, firm, or corporation other than an electric cooperative that provides electric service facilities to the public.

(6) "Line" means any electric supply conductor.

(7) "Premises" means a building, residence, structure, or facility to which electric service facilities are provided or are to be installed; however, two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and that are used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes must together constitute one premises, except that any building, structure, or facility, other than a trailer court, may not, together with any other building, structure, or facility, constitute one premises if the electric service to it is separately metered and the charges for that service are calculated independently of charges for service to any other building, structure, or facility.

(8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18.

History: En. Sec. 2, Ch. 7, L. 1971; amd. Sec. 1, Ch. 68, L. 1975; R.C.M. 1947, 70-502; amd. Sec. 35, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 inserted definition of agreement; deleted definition of commercial premises that read: ""Commercial premises" means the premises where the business of selling, warehousing, or distributing a commodity or other business activity is carried on or professional or other services are rendered"; substituted definition of electric facilities provider for ""Electric supplier" means any electrical utility and any electric cooperative"; inserted definition of electric service facilities; in definition of electric utility, near end after "service", inserted "facilities"; deleted definition of industrial premises that read: ""Industrial premises" means the premises where an industrial activity is carried on, including but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping, cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other extractive, fabricating, or processing activities"; in definition of line inserted "supply" and at end deleted "operating at a nominal voltage level of 34,500 volts or less, measured phase-to-phase"; in definition of premises, near beginning, substituted "electric service facilities are provided" for "electricity is being" and substituted "installed" for "furnished"; inserted definition of utility; and made minor changes in style. Amendment effective May 2, 1997.

Cross-References

Rural electric and telephone cooperatives defined, 35-18-102.

69-5-103. Repealed. Sec. 46, Ch. 505, L. 1997.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(part).

69-5-104. Continuation of electric service facilities to existing consumers. Each electric service facilities provider has the right to provide electric service facilities to all premises being served by it or to which any of its facilities are attached on May 2, 1997.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(1); amd. Sec. 36, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 substituted "electric service facilities provider" for "electric supplier", substituted "provide electric service facilities to" for "serve", and at end substituted "May 2, 1997" for "February 1, 1971"; and made minor changes in style. Amendment effective May 2, 1997.

69-5-105. Service to new consumers. (1) Subject to this part, the electric facilities provider having a line nearest the premises, as measured in accordance with subsection (2), shall provide electric service facilities to the premises initially requiring service after May 2, 1997, which creates a rebuttable presumption that the nearest line is the least-cost electric service facility to the new customer. However, a customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost.

(2) All measurements under this part must be made on the shortest straight line that can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.

(3) If the electric facilities providers are unable to reach agreement as to which electric facilities provider can provide electric service facilities at least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the consumer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(2); amd. Sec. 37, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 in (1), in first sentence near beginning, substituted "this part" for "69-5-106", substituted "electric facilities provider" for "electric supplier", substituted "shall provide electric service facilities to the" for "shall serve", and substituted "May 2, 1997, which creates a rebuttable presumption that the nearest line is the least-cost electric service facility to the new customer. However, a customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost" for "February 1, 1971"; in (2) deleted second sentence that read: "Construction power for premises to be constructed shall be supplied by the electric supplier having the right to serve the completed premises"; inserted (3) concerning use of independent consultant engineer; and made minor changes in style. Amendment effective May 2, 1997.

69-5-106. Electric service facilities to large customers. (1) An electric utility has the right to furnish electric service facilities to any premises if the estimated connected load for full operation at the premises will be 400 kilowatts or larger within 2 years from the date of initial service and if the electric utility can extend its facilities to the premises at less cost to the electric utility than the electric cooperative cost. The estimated connected load must be determined from the plans and specifications prepared for construction of the premises or, if an estimate is not available, must be determined by agreement of the electric facilities provider and the customer. The fact that the actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric facilities provider initially providing electric service facilities to continue to provide electric service facilities to the premises.

(2) An independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its facilities at the least cost to the utility. The cost of those engineering services must be paid equally by the electric facilities providers involved.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(3); amd. Sec. 12, Ch. 43, L. 1979; amd. Sec. 38, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 in (1), in two places, and in (2), in four places, substituted reference to electric facilities providers for reference to electric supplier; in (1), in first sentence near beginning after "furnish electric service", inserted "facilities", after "to any" deleted "industrial or commercial", after "connected load for full" deleted "plant", after "utility can extend its" substituted "facilities" for "lines", and near end, after "electric utility", deleted "or the industrial or commercial customer" and in third sentence substituted "providing electric service facilities to continue to provide electric service facilities" for "providing service to continue service"; in (2), near end of first sentence, substituted "facilities" for "lines to the consumer" and after "at the least cost" inserted "to the utility"; deleted (3) that read: "(3) No premises other than another such commercial or industrial premises shall be served from a line constructed under this section"; and made minor changes in style. Amendment effective May 2, 1997.

69-5-107. Customer-owned facilities. This part may not limit a customer's right to construct, own, or operate electric service facilities for the customer's own use, and construction, ownership, or use may not cause the customer to be considered a utility. A customer may not duplicate existing electric service facilities.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(4); amd. Sec. 39, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 substituted current text concerning electrical service facilities for customer's own use for "Nothing in 69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any property owned by the electric supplier." Amendment effective May 2, 1997.

69-5-108. Agreements between electric facilities providers. Utilities may enter into agreements that identify the geographical area to be exclusively served by each electric facilities provider that is party to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and all customers, except those provided for in 69-5-106.

History: En. Sec. 4, Ch. 7, L. 1971; R.C.M. 1947, 70-504; amd. Sec. 1, Ch. 167, L. 1995; amd. Sec. 40, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 substituted current text concerning agreement identifying geographical area for exclusive service for "Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric service to any consumer at any premises being served by another electric supplier upon written agreement of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant to this part, upon written agreement of the affected electric suppliers." Amendment effective May 2, 1997.

69-5-109. Special provisions for annexed areas. (1) Electric facilities providers providing electric service facilities in or near areas that are incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since 1985 or having existing municipal planning zones on May 2, 1997, shall enter into agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit the agreements to the commission for approval, pursuant to this part.

(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater. Agreements must be based on the location of facilities in place on May 2, 1997.

(3) If electric facilities providers have failed to negotiate agreements within 1 year from May 2, 1997, the commission shall divide the annexed and planning zone areas into exclusive service territories, using the considerations pursuant to 69-5-112.

(4) Until agreements are final, electric service facilities to new customers will be provided pursuant to 69-5-105.

History: En. Sec. 5, Ch. 7, L. 1971; R.C.M. 1947, 70-505; amd. Sec. 13, Ch. 43, L. 1979; amd. Sec. 41, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 substituted current text concerning agreements dividing annexed and planning zone areas into exclusive service territories for "With respect to service in areas which are annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers have rights and are subject to restrictions as follows:

(1) Every electric supplier has the right to serve all premises being served by it on the date of annexation.

(2) An electric cooperative does not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which 95% or more of the premises were served by an electric cooperative on February 1, 1971." Amendment effective May 2, 1997.

Cross-References

Annexation, Title 7, ch. 2, parts 42 through 47.

69-5-110. Jurisdiction of district courts over disputes. The district courts of the county or counties within which the premises or lines involved in any dispute are located have jurisdiction under this part over all electric facilities providers subject to this part.

History: En. Sec. 6, Ch. 7, L. 1971; R.C.M. 1947, 70-506; amd. Sec. 42, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 near end substituted "electric facilities providers" for "electric suppliers"; and made minor changes in style. Amendment effective May 2, 1997.

69-5-111. Judicial remedies. (1) Whenever an electric facilities provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing or is about to do anything or to permit anything to be done contrary to or in violation of this part, the electric facilities provider affected may file a complaint in the district court setting forth the acts or omissions complained of and requesting an injunction.

(2) If an affidavit showing that grounds exist that an electric facilities provider is in violation of this part is filed with the complaint, a temporary restraining order must be issued without notice. A copy of the temporary restraining order, complaint, and affidavit must be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified in the order and may not be more than 10 days after service of the order and must take precedence over all matters pending before the district court. A judgment making the injunction permanent or dissolving the temporary restraining order that was issued and dismissing the complaint must be made before 10 days after the hearing on the order to show cause.

(3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within 20 days after filing the notice of appeal and must take precedence over all matters pending before the supreme court of Montana.

History: En. Sec. 7, Ch. 7, L. 1971; R.C.M. 1947, 70-507; amd. Sec. 43, Ch. 505, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 505 in (1), in two places, substituted "electric facilities provider" for "electric supplier"; in (2), in first sentence, substituted "that an electric facilities provider is in violation of this part" for "therefor"; and made minor changes in style. Amendment effective May 2, 1997.

Cross-References

Notice of appeal, Rule 4, M.R.App.P. (see Title 25, ch. 21).

Affidavits, Title 26, ch. 1, part 10.

Preliminary injunctions, Title 27, ch. 19, parts 2 through 4.

69-5-112. Commission jurisdiction over agreements. (1) All agreements between electric facilities providers must be submitted to the commission for approval. Each agreement must clearly identify the geographical area to be served by each electric facilities provider. The submission must include:

(a) a map and a written description of the area; and

(b) the terms and conditions pertaining to the implementation of the agreement.

(2) Whenever an agreement involves the exchange or transfer of customers within service territories, the following must also be included with the agreement submission:

(a) the number and class of customers to be transferred;

(b) assurance that the affected customers have been contacted and have received a written explanation of the difference in rates; and

(c) information with respect to the degree of acceptance by affected customers, such as the number in favor of and those opposed to the transfer.

(3) In approving agreements, the commission shall consider but is not limited to consideration of:

(a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electric service to the existing or future ratepayers of any electric facilities provider party of the agreement; and

(b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic duplication of electric service facilities.

(4) An agreement approved by the commission is valid and enforceable, and except as provided in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into an exclusive territory.

(5) The commission shall state its findings and conclusions for approving or disapproving an agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities providers submitting the agreement to the commission shall act according to the agreement until a decision is rendered.

(6) Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by the commission.

(7) The commission may promulgate rules to administer this part consistent with the requirements of this part.

History: En. Sec. 44, Ch. 505, L. 1997.

Cross-References

Adoption and Publication of Rules, Title 2, ch. 4, part 3.

General powers and rulemaking authority of Commission, 69-3-103.

CHAPTER 6

COMMUNICATION UTILITIES

Part 1 — General Provisions

69-6-101. Repealed.
69-6-102. Repealed.
69-6-103. Repealed.
69-6-104. Control of telephone communications to and from a person holding hostages — nonliability of telephone company officials.

Chapter Cross-References

Disposition of telephone license taxes, 15-1-501.

Assessment of public utilities, 15-8-406, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Telephone company license tax, Title 15, ch. 53, part 1.

Financing statement — definitions and requirements, 30-9-409.

Perfection of security interest in transmitting utility's property, 30-9-409.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18, parts 1 through 5.

Permissible work hours for employees, 39-4-106.

Obtaining communication services with intent to defraud, 45-6-306.

Failure to yield party line, 45-8-114.

Violation of privacy in communications, 45-8-213.

Relocation of utilities' facilities, 60-4-402.

Regulated telecommunications, Title 69, ch. 3, part 8.

Eminent domain — utility lines as public use, 70-30-102.

Permissible easements for utilities, 76-6-203.

Easements for public uses, 77-2-101.

Part 1

General Provisions

69-6-101. Repealed. Sec. 38, Ch. 349, L. 1997.

History: En. Sec. 1001, Civ. C. 1895; re-en. Sec. 4401, Rev. C. 1907; re-en. Sec. 6646, R.C.M. 1921; re-en. Sec. 6646, R.C.M. 1935; R.C.M. 1947, 70-302.

69-6-102. Repealed. Sec. 38, Ch. 349, L. 1997.

History: En. Sec. 1002, Civ. C. 1895; re-en. Sec. 4402, Rev. C. 1907; re-en. Sec. 6647, R.C.M. 1921; re-en. Sec. 6647, R.C.M. 1935; R.C.M. 1947, 70-303.

69-6-103. Repealed. Sec. 38, Ch. 349, L. 1997.

History: (1)En. Sec. 1, Ch. 182, L. 1907; Sec. 4340, Rev. C. 1907; re-en. Sec. 6579, R.C.M. 1921; re-en. Sec. 6579, R.C.M. 1935; Sec. 72-624, R.C.M. 1947; (2)En. Sec. 2, Ch. 182, L. 1907; Sec. 4341, Rev. C. 1907; re-en. Sec. 6580, R.C.M. 1921; re-en. Sec. 6580, R.C.M. 1935; Sec. 72-625, R.C.M. 1947; (3)En. Sec. 3, Ch. 182, L. 1907; Sec. 4342, Rev. C. 1907; re-en. Sec. 6581, R.C.M. 1921; re-en. Sec. 6581, R.C.M. 1935; Sec. 72-626, R.C.M. 1947; R.C.M. 1947, 72-624, 72-625, 72-626.

69-6-104. Control of telephone communications to and from a person holding hostages — nonliability of telephone company officials. A supervisory law enforcement official who has jurisdiction in a geographical area where hostages are being held and who has probable cause to believe that the holder of the hostages is committing a crime may order a previously designated telephone security employee or other telephone company official to arrange to cut, reroute, or divert telephone lines in order to prevent the holder of the hostages from communicating with any person other than a law enforcement officer or an individual authorized by a law enforcement officer. The serving telephone company within the geographical area of a law enforcement agency shall designate a telephone company security employee or other telephone company official and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section. A telephone security employee or other telephone company official acting in good faith under an order given pursuant to this section does not commit the offense of violating privacy in communications and is not liable in any civil action brought as a result of such good faith actions.

History: En. Sec. 2, Ch. 356, L. 1979.

Cross-References

Aggravated kidnapping, 45-5-303.

Privacy in communications, 45-8-213.

CHAPTER 7

MUNICIPAL UTILITIES

Part 1 — Regulation of Rates by Municipality

69-7-101. Municipal utilities — regulation by municipality.
69-7-102. Repealed.
69-7-103 through 69-7-110 reserved.
69-7-111. Municipal rate hearing required — notice.
69-7-112. Conduct of municipal rate hearing.
69-7-113. Appeals.
69-7-114 through 69-7-120 reserved.
69-7-121. Repealed.

Part 2 — Operation of Utilities

69-7-201. Rules for operation of municipal utility.

Chapter Cross-References

Grant of franchise to public utility by city, 7-3-4222, 7-3-4223.

Officer or employee of city not to be interested in contract with public utility, 7-3-4256.

Cities under commission-manager plan — power to own and regulate public utilities, 7-3-4313.

Ordinances and franchises concerning public utilities not emergency measures, 7-3-4325, 7-3-4326.

Renewal of grant for construction of public utility, 7-3-4450.

Destruction of public records relating to utilities, 7-5-4124.

Metropolitan sanitary district ratemaking, 7-13-144.

General provisions related to county utility services, Title 7, ch. 13, part 21.

County water and sewer districts, Title 7, ch. 13, parts 22 and 23.

Municipal utility services — general provisions, Title 7, ch. 13, part 41.

Public sewer systems, Title 7, ch. 13, part 42.

Municipal sewage and water systems, Title 7, ch. 13, part 43.

Authorization of cities and towns to furnish water and sewer services, 7-13-4311, 7-13-4312.

Illegal use of water or sewer system, 7-13-4313.

Local government water supply and regulation, Title 7, ch. 13, part 44.

Prohibited contributions to candidates from corporations, 13-35-227.

Assessment of public utilities, 15-8-406, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Report of property by utilities to Department of Revenue, 15-23-301.

Energy conservation materials in dwellings — loans, 15-32-107.

Telephone company license tax, Title 15, ch. 53.

Permissible easements for utilities, 76-6-203.

Part 1
Regulation of Rates by Municipality

69-7-101. Municipal utilities — regulation by municipality. A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications must be reasonable and just.

History: En. Sec. 1, Ch. 607, L. 1981; amd. Secs. 4, 8, Ch. 588, L. 1983; amd. Sec. 1, Ch. 288, L. 1995.

Cross-References

Public bond issues, Title 17, ch. 5.

69-7-102. Repealed. Sec. 2, Ch. 288, L. 1995.

History: En. Sec. 5, Ch. 607, L. 1981; amd. Secs. 4, 9, Ch. 588, L. 1983.

69-7-103 through 69-7-110 reserved.

69-7-111. Municipal rate hearing required — notice. (1) Except as provided in 75-5-516 and 75-6-108, if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel.

History: En. Sec. 2, Ch. 607, L. 1981; amd. Secs. 4, 10, Ch. 588, L. 1983; amd. Sec. 10, Ch. 645, L. 1991; amd. Sec. 3, Ch. 507, L. 1993.

Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 5, ch. 15, part 2; Title 69, ch. 1, part 2.

Investigatory powers of Consumer Counsel, 69-2-203.

69-7-112. Conduct of municipal rate hearing. (1) At the hearing, all persons, associations, corporations or companies affected or interested, including the Montana consumer counsel, may be present and represented by counsel. The hearing may be continued from time to time by the governing body of the municipality. At the conclusion of the hearing, all interested parties shall be allowed to make such arguments as they may consider proper.

(2) Within 30 days after the hearing, the governing body of the municipality shall issue its decision. The decision is final 10 days after being filed with the municipal clerk. A copy of each revised rate schedule shall be filed with the public service commission upon final decision.

History: En. Sec. 3, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Cross-References

Office of municipal clerk, Title 7, ch. 4, part 45.

69-7-113. Appeals. (1) A party to a municipal rate hearing may appeal the decision of the municipality to the district court in whose jurisdiction the municipality lies.

(2) A person may appeal the adoption or application of municipal utility rules to the district court in whose jurisdiction the municipality lies.

History: En. Sec. 7, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Cross-References

Venue, Title 25, ch. 2.

69-7-114 through 69-7-120 reserved.

69-7-121. Repealed. Sec. 2, Ch. 288, L. 1995.

History: En. Sec. 4, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Part 2

Operation of Utilities

69-7-201. Rules for operation of municipal utility. Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. They shall define or provide for use of meter or flat rate user charges, the classification of users, applications for service, and uses of the service. The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries. The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of this chapter.

History: En. Sec. 6, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act — inapplicable to local governments, 2-4-102.

CHAPTER 8

ELECTRIC UTILITY INDUSTRY RESTRUCTURING

Part 1 — General Provisions

69-8-101. Short title.
69-8-102. Legislative findings and policy.
69-8-103. Definitions.
69-8-104. Pilot programs.

Part 2 — Public Utilities

69-8-201. Public utility — transition to customer choice — waiver.
69-8-202. Public utility — transition plans.
69-8-203. Public utility — customer choice — continued service — education of customers.
69-8-204. Public utility — functional separation, divestiture, and nondiscrimination.
69-8-205 through 69-8-207 reserved.
69-8-208. Public utility — distribution services.
69-8-209. Public utilities — transmission services.
69-8-210. Public utilities — electricity supply.
69-8-211. Public utilities — transition costs and charges — rate moratorium.

Part 3 — Cooperative Utilities

69-8-301. Cooperative utility — transition plan for customer choice.
69-8-302. Cooperative utility — customer choice — education of customers — continued service.
69-8-303. Cooperative utility — functional separation.
69-8-304. Cooperative utility — distribution services.
69-8-305 through 69-8-307 reserved.
69-8-308. Cooperative utility — transmission services.
69-8-309. Cooperative utility — electricity supply.
69-8-310. Cooperative utility — transition costs and charges.
69-8-311. Cooperative utility — exemption.

Part 4 — Public Utilities, Cooperative Utilities, and Electricity Suppliers

69-8-401. Maintaining safety and reliability.
69-8-402. Universal system benefits programs.
69-8-403. Commission authority — rulemaking authority.
69-8-404. Licensing.
69-8-405 through 69-8-407 reserved.
69-8-408. Penalties — license revocation.
69-8-409. Bill information — customer nonpayment — commission rulemaking.
69-8-410. Unauthorized switching — commission rulemaking.
69-8-411. Reciprocity.

Part 5 — Transition and Tax Revenue Analysis

69-8-501. Transition advisory committee.
69-8-502. Tax revenue analysis.
69-8-503. Transition costs financing.

Chapter Compiler's Comments

Effective Date: Section 50, Ch. 505, L. 1997, provided: "[This act] is effective on passage and approval." Approved May 2, 1997.

Part 1

General Provisions

69-8-101. Short title. This chapter may be cited as the "Electric Utility Industry Restructuring and Customer Choice Act".

History: En. Sec. 1, Ch. 505, L. 1997.

69-8-102. Legislative findings and policy. The legislature finds and declares the following:

(1) The generation and sale of electricity is becoming a competitive industry.

(2) Montana customers should have the freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible. Affording this opportunity serves the public interest.

(3) The interests of Montana consumers should be protected and the financial integrity of electrical utilities should be fostered.

(4) The public interest requires the continued protection of consumers through:

(a) licensure of electricity suppliers;

(b) provision of information to consumers regarding electricity supply service;

(c) provision of a process for investigating and resolving complaints;

(d) continued funding for public purpose programs for:

(i) cost-effective local energy conservation;

(ii) low-income customer weatherization;

(iii) renewable resource projects and applications;

(iv) research and development programs related to energy conservation and renewables;

(v) market transformation; and

(vi) low-income energy assistance;

(e) assurance of service reliability and quality; and

(f) prevention of anticompetitive and abusive activities.

(5) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana.

History: En. Sec. 2, Ch. 505, L. 1997.

69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers and purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns,

sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(8) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

(9) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(10) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(12) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(13) "Local governing body" means a local board of trustees of a rural electric cooperative.

(14) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(15) "Nonbypassable rates or charges" means rates or charges approved by the commission imposed on a customer to pay the customer's share of transition costs or universal system benefits program costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(16) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electric supply for all residential and commercial customers.

(17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(18) "Transition bondholder" means a holder of transition bonds including trustees, collateral agents, and other entities acting for the benefit of that holder.

(19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(20) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(21) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(22) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

(24) "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(25) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(26) "Transmission services provider" means a person controlling or operating transmission facilities.

(27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

(28) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(29) "Utility" means any public utility or cooperative utility.

History: En. Sec. 3, Ch. 505, L. 1997.

69-8-104. Pilot programs. (1) Except as provided in 69-8-201(4) and 69-8-311, beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2000.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;

(c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers.

History: En. Sec. 4, Ch. 505, L. 1997.

Part 2
Public Utilities

69-8-201. Public utility — transition to customer choice — waiver. (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) (a) Except as provided for in subsection (3), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

(i) implementation would not be administratively feasible;

(ii) implementation would materially affect the reliability of the electric system; or

(iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

(4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section.

History: **En. Sec. 5, Ch. 505, L. 1997.**

69-8-202. Public utility — transition plans. (1) All public utilities, pursuant to this chapter, shall submit a transition plan to the commission. Plans must be filed with the commission not later than 1 year before the date by which any customers of the public utility are entitled to choice of electricity supplier pursuant to 69-8-201. The commission may develop a schedule for public utilities that are required to file plans. The transition plan must demonstrate that the public utility meets all the requirements of this chapter.

(2) The commission shall develop a procedural schedule that includes:

(a) a preliminary transition plan determination including the commission's findings on whether the plan is complete and adequate subject to the requirements of this chapter; and

(b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

(3) Unless waived by the public utility, the commission shall issue a final order approving, modifying, or denying the transition plan before 9 months after the date a public utility files a plan. All parties are afforded an opportunity for hearing before issuance of the final order.

(4) The commission shall process a request for approval of a transition plan pursuant to the contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(5) On approval of the plan, the commission shall enforce the public utility obligations as incorporated in the plan and in the commission's final order.

History: **En. Sec. 6, Ch. 505, L. 1997.**

69-8-203. Public utility — customer choice — continued service — education of customers. (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.

(2) If a customer has not chosen an electricity supplier by the end of the transition period, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier.

(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in 69-8-201.

(4) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

History: **En. Sec. 7, Ch. 505, L. 1997.**

69-8-204. Public utility — functional separation, divestiture, and nondiscrimination. (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

(2) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.

(3) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(4) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with the federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

History: En. Sec. 8, Ch. 505, L. 1997.

69-8-205 through 69-8-207 reserved.

69-8-208. Public utility — distribution services. (1) A public utility's distribution services provider shall:

(a) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

History: En. Sec. 9, Ch. 505, L. 1997.

69-8-209. Public utilities — transmission services. For transmission services regulated by the commission, public utilities, through filed tariffs, shall make transmission services available for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and by customers.

History: En. Sec. 10, Ch. 505, L. 1997.

69-8-210. Public utilities — electricity supply. (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(4) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

History: En. Sec. 11, Ch. 505, L. 1997.

69-8-211. Public utilities — transition costs and charges — rate moratorium. (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period as follows:

(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.

(b) From July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) portions of the increase or decrease in the annual state and local property tax expense that are greater than the payment or adjustment that results from applying the industry-recognized rates of inflation to the increase or decrease in the state and local property tax expense reflected in rates as of May 2, 1997.

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) During the 4-year transition period, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings.

History: En. Sec. 12, Ch. 505, L. 1997.

Part 3

Cooperative Utilities

69-8-301. Cooperative utility — transition plan for customer choice. (1) Except as provided in 69-8-311, on or before July 1, 2001, the local governing body of a cooperative utility shall adopt a transition plan.

(2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have the opportunity to choose an electricity supplier.

(b) If after a pilot program for customers of a cooperative utility with loads less than 1,000 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not developed, then the transition plan may be altered by the cooperative utility's governing body for those customers.

(3) This chapter does not require the cooperative utility to divest itself of any generation, transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those assets.

(4) A cooperative utility's local governing body shall certify to the commission that the local governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative utility shall provide to

the commission documentation that the cooperative utility's transition plan is consistent with this chapter.

History: **En. Sec. 13, Ch. 505, L. 1997.**

69-8-302. Cooperative utility — customer choice — education of customers — continued service. (1) Except as provided in 69-8-311, cooperative utilities shall propose a method for cooperative utility customers to choose an electricity supplier.

(2) Customer choice may be phased in to promote the orderly transition to a competitive market environment.

(3) Cooperative utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

(4) If a cooperative utility customer has not chosen an electricity supplier by the end of the transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity supplier designated by the cooperative utility.

History: **En. Sec. 14, Ch. 505, L. 1997.**

69-8-303. Cooperative utility — functional separation. (1) To the extent that a cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets and operations in the state of Montana. If the cooperative utility intends to exercise this option, the cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

(2) A cooperative utility shall describe in the transition plan measures taken by the cooperative utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and in favor of the cooperative utility's affiliates, if any.

(3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory commissions code of conduct established in 18 CFR, part 37.

History: **En. Sec. 15, Ch. 505, L. 1997.**

69-8-304. Cooperative utility — distribution services. (1) A cooperative utility transition plan must include distribution facility tariffs that must be established by the cooperative utility's local governing body and must include the obligation for the cooperative utility to:

(a) make distribution services available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) If a distribution services provider acts as an emergency supplier of electricity and related services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual obligations shall reimburse the distribution services provider at an amount to be set by the local governing body but may not exceed the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The market rate is the highest

published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

(3) Recoverable costs for cooperative utilities must be based upon standard financial reporting statements and may reflect comparable rates of return of other utilities.

History: **En. Sec. 16, Ch. 505, L. 1997.**

69-8-305 through 69-8-307 reserved.

69-8-308. Cooperative utility — transmission services. Transition plans must state whether the cooperative utility's transmission services, if any, are regulated by the federal energy regulatory commission. If those services are not regulated by the federal energy regulatory commission, the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers, distribution services providers, and customers. A cooperative utility's local governing body shall establish the cooperative utility's transmission tariffs.

History: **En. Sec. 17, Ch. 505, L. 1997.**

69-8-309. Cooperative utility — electricity supply. (1) A transition plan may provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer electricity supply service. The local governing body shall establish the price for electricity supply service offered by a cooperative utility.

(2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions of 69-8-404.

(3) If a cooperative utility offers electricity supply service competitively to customers using a public utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar structure to serve those customers that allows the entity to be taxed at the same level as other for-profit electricity suppliers.

History: **En. Sec. 18, Ch. 505, L. 1997.**

69-8-310. Cooperative utility — transition costs and charges. (1) For the purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may not be recoverable as a result of the transition to a competitive market for electricity supply service.

(2) Transition costs eligible for treatment include but are not limited to:

(a) regulatory assets and deferred charges typically recoverable in rates;

(b) nonutility and utility power purchase contracts;

(c) existing commitments or obligations incurred before May 2, 1997, and other cooperative utility investments rendered uneconomic as a result of the implementation of this chapter or the introduction of retail wheeling through federal legislation or regulation;

(d) costs associated with any renegotiation or buyout of the existing nonutility and utility power purchase contracts;

(e) revenue that appears as a portion of a facility charge necessary to meet debt service requirements, including any coverage amounts required by any mortgage, indenture, or other financing document;

(f) costs of refinancing and retiring debt of the cooperative utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers; and

(g) all costs, expenses, and reasonable fees related to transition bonds.

(3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall make reasonable efforts to mitigate those transition costs.

(4) Cooperative utilities may not collect any more costs, including costs reallocated to transition costs, at a level higher than would otherwise be anticipated had the current regulatory system remained intact, with the exception of:

(a) increased costs related to universal system benefits charges; and

(b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

(5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution facilities in the receipt of electricity supply services.

(6) A cooperative utility may not collect transition costs from a customer for which the cooperative utility does not have and never has had an obligation to incur costs to provide electricity supply service unless the unmitigated transition costs were incurred solely on behalf of the customer.

(7) Approval of and collection of transition costs through a transition charge is a settlement of all transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through any other means may not collect transition charges.

History: En. Sec. 19, Ch. 505, L. 1997.

69-8-311. Cooperative utility — exemption. (1) Within 1 year after May 2, 1997, a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant to 69-8-402, a cooperative utility filing notice under this section is exempt from the provisions and requirements of this chapter.

(2) A cooperative utility filing a notice under this section:

(a) may elect later to adopt a transition plan in accordance with this chapter; and

(b) may not use a public utility's distribution facilities unless preexisting contracts exist.

History: En. Sec. 20, Ch. 505, L. 1997.

Part 4

Public Utilities, Cooperative Utilities, and Electricity Suppliers

69-8-401. Maintaining safety and reliability. Utilities shall maintain standards of safety and reliability of the electric delivery system and existing customer service requirements.

History: En. Sec. 21, Ch. 505, L. 1997.

69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless modified as provided in subsection (7), this funding level remains in effect until July 1, 2003.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for customers' programs or activities as provided in subsection (7).

(c) A utility at which the sale of power for final end-use occurs is the utility that receives credit for the universal system benefits program expenditure.

(d) For a utility to receive credit for low-income related expenditures, the activity must have taken place in Montana.

(e) If a utility's or a customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal energy assistance fund.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A customer with loads greater than 1,000 kilowatts shall:

(i) pay a universal system benefits program charge equal to the lesser of:

(A) $500,000 less the customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases, less customer credits provided for in this subsection (7);

(ii) receive credit toward that customer's annual universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits program expenditure and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the customer's facility; and

(B) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Customers making these expenditures must receive a credit against the customer's annual universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The annual report must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

History: En. Sec. 22, Ch. 505, L. 1997.

69-8-403. Commission authority — rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured during the transition period by the distribution function of a public utility for those customers that have not chosen an electricity supplier or for those customers that have not yet been assigned an electricity supplier. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) If the transition period is extended for certain customers because the commission finds that workable competition in the electricity supply market does not exist, then the commission shall continue to regulate the provision of electricity supply by distribution services providers in accordance with 69-8-210.

(3) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

(5) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(6) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(7) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(8) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(9) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

(10) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter.

History: En. Sec. 23, Ch. 505, L. 1997.

69-8-404. Licensing. (1) Except as provided in 69-8-311, an electricity supplier shall file an application with and obtain a license from the commission before offering electricity for sale to retail customers in the state of Montana.

(2) As a condition of licensing, an electricity supplier shall identify and describe its activities and purposes and the purposes of each of the electricity supplier's affiliates, if any, including whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair, and nondiscriminatory access to the electricity supplier's or the electricity supplier's affiliates distribution facilities.

(3) The commission may require electricity suppliers that provide electricity supply service to small customers to make a standard service offer that ensures that those customers have access to affordable electricity.

(4) The commission may require:

(a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to obtain those reserves; and

(b) a licensee to post a bond should an electricity supplier fail to supply electricity or lack financial integrity.

(5) An electricity supplier shall provide the commission and all distribution services providers with copies of all license applications pursuant to subsection (2). Licensees shall update information and file annual reports with the commission and all distribution services providers.

(6) License applications are effective 30 days after filing with the commission unless the commission rejects the application during that period. If the commission rejects a license application, the commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome deficiencies.

(7) Notwithstanding this chapter, a cooperative utility is not required to apply for a license from the commission to be an electricity supplier to customers served by that cooperative utility in its electric facilities service territory or to any customers served by another cooperative utility subject to the consent of the other cooperative utility's local governing body.

History: En. Sec. 24, Ch. 505, L. 1997.

69-8-405 through 69-8-407 reserved.

69-8-408. Penalties — license revocation. (1) The commission may begin a proceeding to revoke or suspend a license of an electricity supplier, impose a penalty, or both, for just cause on the commission's own investigation or upon the complaint of an affected party if it is established that the electricity supplier:

(a) intentionally provided false information to the commission;

(b) switched, or caused to be switched, the electricity supply for a customer without first obtaining the customers written permission;

(c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; or

(d) committed fraud or engaged in deceptive practices.

(2) Any person selling or offering to sell electricity in this state in violation of 69-8-404, 69-8-410, and this section is subject to a fine of not less than $100 or more than $1,000 for the violation or a license revocation or suspension. Each day of each violation constitutes a separate violation.

(3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.

(4) A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

History: En. Sec. 25, Ch. 505, L. 1997.

69-8-409. Bill information — customer nonpayment — commission rulemaking. (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules promulgated by the commission. Electrical bills must disclose but are not limited to the following:

(a) distribution and transmission charges;

(b) electricity supply charges;

(c) competitive transition charges; and

(d) universal system benefits charges.

(2) The commission shall promulgate rules establishing the procedures relating to how and when an electricity supplier may discontinue service to a customer because of the customers nonpayment and the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that are cooperative utilities.

(3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities regarding:

(a) customer nonpayment and reconnection; and

(b) information contained in electrical bills to consumers.

History: En. Sec. 26, Ch. 505, L. 1997.

69-8-410. Unauthorized switching — commission rulemaking. (1) An electricity supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity supplier for a customer without first obtaining the customers written permission.

(2) The commission shall promulgate rules establishing procedures to prevent unauthorized switching.

History: En. Sec. 27, Ch. 505, L. 1997.

69-8-411. Reciprocity. (1) Except as provided in 69-8-311, all electricity suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable opportunity to compete.

(2) A distribution services provider or the distribution services provider's affiliates may not use another distribution services provider's facilities in the state of Montana to sell electricity to customers in the state of Montana unless the first distribution services provider or the distribution services provider's affiliates offer comparable and nondiscriminatory access to the distribution services provider's distribution facilities.

History: En. Sec. 28, Ch. 505, L. 1997.

Part 5

Transition and Tax Revenue Analysis

69-8-501. Transition advisory committee. (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of eight voting members who are appointed as follows:

(a) The speaker of the house shall appoint four members from the house of representatives, not more than two of whom may be from one political party.

(b) The president of the senate shall appoint four members from the senate, not more than two of whom may be from one political party.

(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:

(a) The director of the department of environmental quality shall appoint one department representative.

(b) The legislative consumer committee shall appoint one representative.

(c) One representative of the cooperative utility industry is appointed as designated by the Montana electrical cooperative association.

(d) The public utilities in the state of Montana shall appoint one member.

(e) The commission shall appoint one member.

(f) The governor shall appoint the following nonvoting committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the nonindustrial retail electric consumer sector;

(iii) one representative from organized labor;

(iv) one representative from the community comprising environmental and conservation interests;

(v) one representative from a low-income program provider;

(vi) one representative of Montanas Indian tribes; and

(vii) one representative of the electric power market industry.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must be appointed within 60 days of May 2, 1997, to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

(8) The transition advisory committee on electric utility industry restructuring must dissolve on the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate, and the commission and shall provide quarterly interim summary reports to the members of the legislature through January 1, 1999.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market. The annual report made in the year 2000 must evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include legislative recommendations, if it appears appropriate, about the best means to further encourage the development of customer choice and meaningful market access for the benefit of smaller customers. The annual report for the year 2000 must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(14) The transition advisory committee shall make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agency or private, nonprofit entity as the fund administrator and administration guidelines for the funds, including the means by which funds may be made available for use.

(15) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in 69-8-402 to coincide with the related activities of the region at that time.

(16) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.

(17) On or before November 1, 2001, the transition advisory committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to this chapter

to utilities or their affiliates located outside the state of Montana. That information must be included in the report to the 58th legislature.

(18) On or before November 1, 1998, the transition advisory committee shall make recommendations to the governor and the legislature regarding the provision of low-income energy assistance programs in Montana by all energy providers.

History: **En. Sec. 29, Ch. 505, L. 1997.**

69-8-502. Tax revenue analysis. (1) The revenue oversight committee, as provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously regulated electricity suppliers that will enter the competitive market and report to the legislature annually on how revenue to the state or local government is changed by restructuring and competition.

(2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative changes, if any, to address the establishment of comparable state and local taxation burdens on all market participants in the supply of electricity. Any legislation recommended by the revenue oversight committee should place comparable state and local taxation burdens upon all market participants.

History: **En. Sec. 30, Ch. 505, L. 1997.**

69-8-503. Transition costs financing. (1) A utility may, after July 1, 1997, apply to the commission for a determination that certain transition costs may be recovered through the issuance of transition bonds. If transition bonds are issued, cost savings associated with and resulting from the bonds must benefit customers. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition property or to cause the transition bonds to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance. If transition bonds are not issued within 4 years of the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or renewal of a financing order.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property. A financing order may be adopted only upon the application of a utility and may only become effective in accordance with its terms after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed transition amounts and other charges.

(b) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The order must set forth the term over which the transition bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section with respect to transition property that has been made the basis for the issuance of transition bonds and upon the issuance of transition bonds, the financing orders and the fixed transition amounts must be irrevocable.

(b) If transition bonds have been issued, the commission may not by rescinding, altering, or amending the financing order or otherwise:

(i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property;

(ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

(iii) in any way reduce or impair the value of transition property either directly or indirectly by taking fixed transition amounts into account when setting other rates for the utility.

(c) The total amount of the transition property may not be subject to reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed transition amounts, transition property, financing orders, or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these bonds.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are payable solely from the funds provided under this section. The bonds and offering documents must contain on their face a statement to the following effect:

This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith and credit nor the taxing power of the state of Montana is pledged to the payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of this bond. This bond is a limited obligation of the issuer, payable solely out of the transition property or the proceeds of that property specifically pledged for its payment and not otherwise.

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any appropriation for bond payment.

(5) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval of applications within 120 days after a utility submits a complete application. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine on each anniversary of the issuance of the financing order and at additional intervals as may be provided for in the financing order whether the adjustments are required and shall provide for the adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in the financing order.

(6) Fixed transition amounts become transition property when and to the extent that a financing order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and the transition property must thereafter continuously exist as property for all purposes with all of the rights and privileges of this chapter for the period and to the extent provided in the financing order or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages on the transition bonds.

(7) Transition bonds may be issued upon commission approval in the pertinent financing order. Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility, other than the transition property as specified in the pertinent financing order.

(8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in that transition property to one or more assignees in connection with the issuance of transition bonds to the extent approved in the pertinent financing order.

(b) A utility or an assignee may pledge transition property as collateral for transition bonds to the extent approved in the pertinent financing order and may provide for a security interest in the transition property as provided in this section.

(c) Transition property may be sold, assigned, or transferred for the benefit of:

(i) transition bondholders in connection with the exercise of remedies upon a default; or

(ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this section.

(9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged as collateral, the commission shall authorize

the utility to contract with any assignee so that the utility will, subject to the utility's rights under subsection (18):

(i) continue to operate the utility's system and to provide service to the utility's customers;

(ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the assignee; and

(iii) account for and remit these amounts to or for the account of the assignee.

(b) Contracting with the assignee in accordance with the commission's authorization may not impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute assignment or transfer, or a grant of a security interest, as applicable.

(10) Notwithstanding any other provision of law, any provision under this section or under a financing order requiring that the commission take or refrain from taking action with respect to the subject matter of a financing order binds the commission and any successor commission or agency exercising functions similar to the commission, and the commission or any successor commission or agency may not rescind, alter, or amend that requirement in a financing order.

(11) A pledge or any other security interest in transition property is valid, is enforceable against the pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, and attaches only when all of the following have taken place:

(a) the commission has issued the financing order authorizing the fixed transition amounts included in the transition property;

(b) value has been given by the pledgees of the transition property; and

(c) the pledgor has signed a security agreement or other financing-related agreement covering the transition property.

(12) (a) A valid and enforceable security interest in transition property is perfected only when it has attached and when a financing statement has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing statement must name the pledgor of the transition property as debtor and identify the transition property.

(b) Any description of the transition property is sufficient if the description refers to the financing order creating the transition property.

(c) The commission may require other filings with respect to the security interest in accordance with procedures the commission may establish, except that these filings may not affect the perfection of the security interest.

(13) A perfected security interest in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection. Transition property constitutes property for all purposes, including for contracts securing transition bonds, whether or not the revenue and proceeds arising with respect to the transition property have accrued.

(14) (a) Subject to the terms of the security agreement covering the transition property and the rights of any third parties holding security interests

in the transition property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by:

(i) the commingling of revenue arising with respect to the transition property with other funds of the utility that is the pledgor or transferor of the transition property; or

(ii) any security interest of any third party in a deposit account of that utility perfected under Title 30, chapter 9, part 3, into which the revenue is deposited.

(b) Subject to the terms of the security agreement, upon compliance with the requirements of this section, a pledgee of the transition property has a perfected security interest in all cash and deposit accounts of the utility in which revenue arising with respect to the transition property has been commingled with other funds, but the perfected security interest must be limited to an amount no greater than the amount of the revenue with respect to the transition property received by the utility within 12 months before any default under the security agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue to the pledgees during that 12-month period.

(15) (a) If a default occurs under the security agreement covering the transition property, a pledgee of the transition property, subject to the terms of the security agreement, has all rights and remedies of a secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise enforce the pledgee's security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section.

(b) The commission may require in the financing order creating the transition property that in the event of default by the utility in payment of revenue arising with respect to the transition property, the commission and any successor to the commission, upon the application by a pledgee or assignee of the transition property and without limiting any other remedies available to the pledgees or transferees by reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or transferor of the transition property.

(c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the transition bonds and other costs arising under the security agreement must be remitted to the debtor or to the pledgor as provided in the security agreement.

(16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of all of the transferors right, title, and interest, as in a true sale, and not as a pledge or other financing of the transition property, other than for federal and state income and franchise tax purposes.

(b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must be treated as a pledge or other financing unless the governing documentation of transfer specifically states that the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of transition property may only be considered perfected as against any third person, including any judicial lien creditor, when both of the following have taken place:

(a) the financing order authorizing the fixed transition amounts included in the transition property has become effective in accordance with subsection (2); and

(b) an assignment of the transition property, in writing, has been executed and delivered to the transferee.

(18) (a) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the secretary of state in accordance with procedures that the secretary of state may establish has priority. The financing statement must name the assignor of the transition property as debtor and must identify the transition property. Any description of the transition property is sufficient if the description refers to the financing order creating the transition property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged to secure transition bonds.

(19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of transition property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated transition property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or interest other than in the order and the transition property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition property previously perfected in the manner described in this section if value has been given by the purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated transition property, whether or not revenue has been accrued. Transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenue has accrued. The lien created under this section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the transition property, to the fixed transition costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section is not defeated or adversely affected by changes to the financing order or to the fixed transition amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of transition property to an assignee be filed in accordance with the same system.

(22) Any sale, assignment, or other transfer of transition property or any pledge of transition property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The transition bonds issued under this chapter are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to transition property and the proceeds thereof are governed by this section rather than by Title 30, chapter 9.

(25) Upon the payment in full of transition bond principal and interest, the utility shall discontinue charging and collecting the competitive transition charge associated with that portion of the utility's approved transition costs.

(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class of security, public utility, or class of public utility is not required by the public interest.

History: En. Sec. 31, Ch. 505, L. 1997.

CHAPTER 11

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Transportation of bees — certificate of health, 80-6-203.

Expense of cleaning and disinfecting carriers' facilities after storing or transferring pesticides, 81-2-110.

Shipment of fish, game or nongame birds, game animals, fur-bearing animals, skins, or parts, 87-3-114.

69-11-101. Definitions. (1) Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a "common carrier" of whatever he thus offers to carry.

(2) The "contract of carriage" is a contract for the conveyance of property, persons, or messages from one place to another.

History: (1)En. Sec. 2870, Civ. C. 1895; re-en. Sec. 5332, Rev. C. 1907; re-en. Sec. 7846, R.C.M. 1921; Cal. Civ. C. Sec. 2168; Based on Field Civ. C. Sec. 1134; re-en. Sec. 7846, R.C.M. 1935; Sec. 8-701, R.C.M. 1947; (2)En. Sec. 2770, Civ. C. 1895; re-en. Sec. 5296, Rev. C. 1907; re-en. Sec. 7811, R.C.M. 1921; Cal. Civ. C. Sec. 2085; Field Civ. C. Sec. 1085; re-en. Sec. 7811, R.C.M. 1935; Sec. 8-401, R.C.M. 1947; R.C.M. 1947, 8-401, 8-701.

69-11-102. Restrictions on preferential treatment. (1) A common carrier must not give preference in time, price, or otherwise to one person over another.

(2) A common carrier must always give a preference in time and may give a preference in price to the United States and to this state.

History: (1)En. Sec. 2872, Civ. C. 1895; re-en. Sec. 5334, Rev. C. 1907; re-en. Sec. 7848, R.C.M. 1921; Cal. Civ. C. Sec. 2170; re-en. Sec. 7848, R.C.M. 1935; Sec. 8-703, R.C.M. 1947; (2)En. Sec. 2873, Civ. C. 1895; re-en. Sec. 5335, Rev. C. 1907; re-en. Sec. 7849, R.C.M. 1921; Cal. Civ. C. Sec. 2171; Field Civ. C. Sec. 1137; re-en. Sec. 7849, R.C.M. 1935; Sec. 8-704, R.C.M. 1947; R.C.M. 1947, 8-703(part), 8-704.

69-11-103. Time schedules to be followed. A common carrier must start at such time and place as he announces to the public unless detained by accident or the elements or in order to connect with carriers on other lines of travel.

History: En. Sec. 2874, Civ. C. 1895; re-en. Sec. 5336, Rev. C. 1907; re-en. Sec. 7850, R.C.M. 1921; Cal. Civ. C. Sec. 2172; re-en. Sec. 7850, R.C.M. 1935; R.C.M. 1947, 8-705.

69-11-104. Right to compensation. A common carrier is entitled to a reasonable compensation, and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

History: En. Sec. 2875, Civ. C. 1895; re-en. Sec. 5337, Rev. C. 1907; re-en. Sec. 7851, R.C.M. 1921; Cal. Civ. C. Sec. 2173; Field Civ. C. Sec. 1139; re-en. Sec. 7851, R.C.M. 1935; R.C.M. 1947, 8-706.

69-11-105. Effect of agreements on rights and obligations of carrier and other parties. (1) The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

(2) A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.

(3) A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire and the time, place, and manner of delivery therein stated, but his assent to any other modification of the carrier's rights or obligations contained in such instrument can be manifested only by his signature to the same, except as otherwise provided in the Uniform Commercial Code.

History: (1)En. Sec. 2876, Civ. C. 1895; re-en. Sec. 5338, Rev. C. 1907; re-en. Sec. 7852, R.C.M. 1921; Cal. Civ. C. Sec. 2174; re-en. Sec. 7852, R.C.M. 1935; Sec. 8-707, R.C.M. 1947; (2)En. Sec. 2877, Civ. C. 1895; re-en. Sec. 5339, Rev. C. 1907; re-en. Sec. 7853, R.C.M. 1921; Cal. Civ. C. Sec. 2175; Field Civ. C. Sec. 1141; re-en. Sec. 7853, R.C.M. 1935; Sec. 8-708, R.C.M. 1947; (3)En. Sec. 2878, Civ. C. 1895; re-en. Sec. 5340, Rev. C. 1907; re-en. Sec. 7854, R.C.M. 1921; Cal. Civ. C. Sec. 2176; Field Civ. C. Sec. 1142; re-en. Sec. 7854, R.C.M. 1935; amd. Sec. 11-105, Ch. 264, L. 1963; Sec. 8-709, R.C.M. 1947; R.C.M. 1947, 8-707, 8-708, 8-709.

Cross-References

Negligence, 27-1-701, 27-1-702.

Fraud, 28-2-404 through 28-2-406.

Special provisions relating to bills of lading, Title 30, ch. 7, part 3.

69-11-106. Gratuitous carriers. (1) Carriers without reward are subject to the same rules as employees without reward, except as is otherwise provided by this chapter.

(2) A carrier without reward who has begun to perform his undertaking must complete it in like manner as if he had received a reward unless he restores the person or thing carried to as favorable a position as before he commenced his carriage.

(3) A carrier of persons without reward must use ordinary care and diligence for their safe carriage. A carrier of property without reward must use at least slight care and diligence.

History: (1)En. Sec. 2771, Civ. C. 1895; re-en. Sec. 5297, Rev. C. 1907; re-en. Sec. 7812, R.C.M. 1921; Cal. Civ. C. Sec. 2089; Field Civ. C. Sec. 1090; re-en. Sec. 7812, R.C.M. 1935; Sec. 8-402, R.C.M. 1947; (2)En. Sec. 2772, Civ. C. 1895; re-en. Sec. 5298, Rev. C. 1907; re-en. Sec. 7813, R.C.M. 1921; Cal. Civ. C. Sec. 2090; Field Civ. C. Sec. 1091; re-en. Sec. 7813, R.C.M. 1935; Sec. 8-403, R.C.M. 1947; (3)Ap. p. Sec. 2780, Civ. C. 1895; re-en. Sec. 5299, Rev. C. 1907; re-en. Sec. 7814, R.C.M. 1921; Cal. Civ. C. Sec. 2096; Field Civ. C. Sec. 1092; re-en. Sec. 7814, R.C.M. 1935; Sec. 8-404, R.C.M. 1947; Ap. p. Sec. 2810, Civ. C. 1895; re-en. Sec. 5306, Rev. C. 1907; re-en. Sec. 7821, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1099; re-en. Sec. 7821, R.C.M. 1935; Sec. 8-411, R.C.M. 1947; R.C.M. 1947, 8-402, 8-403, 8-404, 8-411(part).

Cross-References

Damages, Title 27, ch. 1, part 2.

Liability, Title 27, ch. 1, part 7.

Duties of gratuitous employee, 39-2-401.

69-11-107. General duty of care of carriers for reward. (1) A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

(2) A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties.

(3) A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

History: (1)En. Sec. 2790, Civ. C. 1895; re-en. Sec. 5300, Rev. C. 1907; re-en. Sec. 7815, R.C.M. 1921; Cal. Civ. C. Sec. 2100; Field Civ. C. Sec. 1093; re-en. Sec. 7815, R.C.M. 1935; Sec. 8-405, R.C.M. 1947; (2)En. Sec. 2810, Civ. C. 1895; re-en. Sec. 5306, Rev. C. 1907; re-en. Sec. 7821, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1099; re-en. Sec. 7821, R.C.M. 1935; Sec. 8-411, R.C.M. 1947; (3)En. Sec. 2861, Civ. C. 1895; re-en. Sec. 5331, Rev. C. 1907; re-en. Sec. 7845, R.C.M. 1921; Cal. Civ. C. Sec. 2162; Field Civ. C. Sec. 1133; re-en. Sec. 7845, R.C.M. 1935; Sec. 8-419, R.C.M. 1947; R.C.M. 1947, 8-405, 8-411(part), 8-419.

Cross-References

Damages, Title 27, ch. 1, part 2.

Liability, Title 27, ch. 1, part 7.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

69-11-108. Prohibition on confiscation of fuel. (1) It shall be unlawful for any person, railway company, or common carrier to confiscate or take for his or its own use or for the use of another any coal or other fuel in transit except when such coal or other fuel is necessary for the preservation of life or property or is required for the moving of trains of such common carrier. In a suit under this section to recover the penalty and damages, the burden of proof shall be on the person, railroad company, or common carrier confiscating the coal or other fuel to show that such coal or other fuel was necessary for the preservation of life or property or was required for the moving of trains of such common carrier.

(2) Any person, railroad company, or common carrier who shall confiscate or take any coal or fuel, either for his or its own use or for the use of another, shall be liable to the consignee or owner of such coal or fuel in double the value of such coal or fuel at the point of shipment and such other damages as may be caused by the confiscation of such coal. Such liability shall be exclusive of and in addition to any and all charges for the transportation of such coal or fuel, which charges for the transportation shall be paid by the party confiscating such coal or fuel. In every case wherein coal or other fuel is taken or used by any such person, railroad company, or common carrier, it shall be the duty of such person, railroad company, or common carrier to notify the consignee by telegram or letter, immediately, of the taking of such coal and to pay and compensate him therefor within 30 days from the time of the taking.

(3) Any person, corporation, or common carrier who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $50 or more than $200.

History: (1)En. Sec. 1, Ch. 119, L. 1907; Sec. 4355, Rev. C. 1907; re-en. Sec. 6592, R.C.M. 1921; re-en. Sec. 6592, R.C.M. 1935; Sec. 72-637, R.C.M. 1947; (2)En. Sec. 2, Ch. 119, L. 1907; Sec. 4356, Rev. C. 1907; re-en. Sec. 6593, R.C.M. 1921; re-en. Sec. 6593, R.C.M. 1935; Sec. 72-638, R.C.M. 1947; (3)En. Sec. 3, Ch. 119, L. 1907; Sec. 4357, Rev. C. 1907; re-en. Sec. 6594, R.C.M. 1921; re-en. Sec. 6594, R.C.M. 1935; Sec. 72-639, R.C.M. 1947; R.C.M. 1947, 72-637, 72-638, 72-639.

Cross-References

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

69-11-109. Provision for transportation of passengers and property for free or reduced rates. (1) No provisions of the laws of this state prevent any person, association, company, or corporation engaged as a common carrier of persons or property in this state from carrying, storing, or handling property free or at reduced rates for the United States, for state or municipal governments, or for charitable institutions; property which is being transported to or from fairs and expositions for exhibit thereat; or cars used by the government of the United States or the state for the transportation of fish and from carrying free or at reduced rates agents and employees employed in such transportation; and nothing therein contained prevents such person, association, company, or corporation from issuing free transportation or selling tickets at reduced rates to the classes of persons listed in 69-11-208.

(2) When free transportation or a ticket at a reduced rate is issued to any officer or any president or member of the faculty of any educational institution referred to in 69-11-208(1)(q), it shall only be issued upon the application of the secretary of state and the transportation or ticket shall be delivered to the secretary of state for delivery to the person or persons applying therefor. The secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him. The state officer and the president and faculty of the state educational institutions, when traveling upon any free transportation, may not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they may not charge mileage in excess of the cost of the ticket.

(3) The carrying free or at reduced rates of property or persons in any of the classes above specified shall be held to be a reasonable classification by common carriers for such purposes and not to be unjust discrimination. The carriage and transportation by any common carrier at free or reduced rates in any of the cases above specified is not a violation of any of the provisions of the laws of Montana and does not subject the common carrier to any penalty therefor.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1913; re-en. Sec. 6575, R.C.M. 1921; re-en. Sec. 6575, R.C.M. 1935; amd. Sec. 18, Ch. 315, L. 1974; Sec. 72-620, R.C.M. 1947; (3)En. Sec. 2, Ch. 53, L. 1913; re-en. Sec. 6576, R.C.M. 1921; re-en. Sec. 6576, R.C.M. 1935; Sec. 72-621, R.C.M. 1947; R.C.M. 1947, 72-620, 72-621; amd. Sec. 14, Ch. 43, L. 1979; amd. Sec. 180, Ch. 575, L. 1981.

Cross-References

Secretary of State, Title 2, ch. 15, part 4.
Mileage allowance, 2-18-503, 2-18-504.
Authorization for free transportation, 69-11-207.

69-11-110 through 69-11-120 reserved.

69-11-121. Detriment caused by carrier. (1) The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

(2) The detriment caused by the breach of a carrier's obligation to deliver freight where he has not converted it to his own use is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

(3) The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it

ought to have been delivered and between the day at which it ought to have been delivered and the day of its actual delivery.

(4) The damages prescribed by this section are exclusive of exemplary damages and interest except where those are expressly mentioned. Notwithstanding the provisions of this section, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except as provided in 27-1-303.

History: En. Secs. 4315, 4316, 4317, 4364, 4365, Civ. C. 1895; re-en. Secs. 6063, 6064, 6065, 6085, 6086, Rev. C. 1907; re-en. Secs. 8681, 8682, 8683, 8703, 8704, R.C.M. 1921; Cal. Civ. C. Secs. 3315, 3316, 3317, 3357, 3358; Field. Civ. C. Secs. 1855, 1856, 1857, 1876, 1877; re-en. Secs. 8681, 8682, 8683, 8703, 8704, R.C.M. 1935; R.C.M. 1947, 17-315, 17-316, 17-317, 17-605(part), 17-606(part); amd. Sec. 15, Ch. 43, L. 1979.

Cross-References

Damages, Title 27, ch. 1, part 2.

Part 2
Carriers of Passengers

Part Cross-References

City-operated bus lines, Title 7, ch. 14, part 44.

Payment of liquor taxes by passenger carriers, 16-1-402.

Passenger carriers liquor license, 16-4-302.

Inspection of cars or aircraft, 16-6-103.

Inspection of carriers' records, 16-6-108.

Ticket agent for carrier exempted from insurance producer examination, 33-17-212.

Blanket disability insurance for common carrier defined, 33-22-601.

The deaf and blind entitled to full and equal accommodation of common carriers, 49-4-211.

Public transportation issues — Department of Transportation to represent state, 60-21-101.

69-11-201. Requirements for carriers of persons for reward. (1) A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put and is not excused for default in this respect by any degree of care.

(2) A carrier of persons for reward must not overcrowd or overload his vehicle.

(3) A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, must treat them with civility, and give them a reasonable degree of attention.

(4) A carrier of persons for reward must travel at a reasonable rate of speed, without any unreasonable delay or deviation from his proper route.

History: (1)En. Sec. 2791, Civ. C. 1895; re-en. Sec. 5301, Rev. C. 1907; re-en. Sec. 7816, R.C.M. 1921; Cal. Civ. C. Sec. 2101; Field Civ. C. Sec. 1094; re-en. Sec. 7816, R.C.M. 1935; Sec. 8-406, R.C.M. 1947; (2)En. Sec. 2792, Civ. C. 1895; re-en. Sec. 5302, Rev. C. 1907; re-en. Sec. 7817, R.C.M. 1921; Cal. Civ. C. Sec. 2102; Field Civ. C. Sec. 1095; re-en. Sec. 7817, R.C.M. 1935; Sec. 8-407, R.C.M. 1947; (3)En. Sec. 2793, Civ. C. 1895; re-en. Sec. 5303, Rev. C. 1907; re-en. Sec. 7818, R.C.M. 1921; Cal. Civ. C. Sec. 2103; Field Civ. C. Sec. 1096; re-en. Sec. 7818, R.C.M. 1935; Sec. 8-408, R.C.M. 1947; (4)En. Sec. 2794, Civ. C. 1895; re-en. Sec. 5304, Rev. C. 1907; re-en. Sec. 7819, R.C.M. 1921; Cal. Civ. C. Sec. 2104; Field Civ. C. Sec. 1097; re-en. Sec. 7819, R.C.M. 1935; R.C.M. 1947, 8-406, 8-407, 8-408, 8-409.

Cross-References

Negligence, 27-1-701, 27-1-702.

69-11-202. Establishment and notice of schedule for passenger carriers. A common carrier of passengers by railroad or by vessel plying upon waters lying wholly within this state shall establish and give public notice of a schedule time for the starting of trains or vessels from their stations or wharves. A common carrier shall, except in case of accident or detention caused by connecting lines or weather conditions, start trains or vessels at or within 10 minutes after the schedule time. Failure to comply is punishable by a fine of $250, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the county attorney, and paid into the elementary county equalization fund.

History: En. Sec. 2872, Civ. C. 1895; re-en. Sec. 5334, Rev. C. 1907; re-en. Sec. 7848, R.C.M. 1921; Cal. Civ. C. Sec. 2170; re-en. Sec. 7848, R.C.M. 1935; R.C.M. 1947, 8-703(part); amd. Sec. 33, Ch. 22, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 22 near middle of third sentence, after "county attorney", deleted "of the county in the name of the state" and at end substituted "elementary county equalization fund" for "common school fund of the county"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Revenue for education equalization, 20-9-331.

Posting information concerning train schedules, 69-14-203.

69-11-203. Transport of passengers. (1) A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

(2) A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

(3) A common carrier of persons may make rules for the conduct of his business and may require passengers to conform to them if they are lawful, public, uniform in their application, and reasonable.

History: (1)En. Sec. 2894, Civ. C. 1895; re-en. Sec. 5346, Rev. C. 1907; re-en. Sec. 7860, R.C.M. 1921; Cal. Civ. C. Sec. 2184; Based on Field Civ. C. Sec. 1147; re-en. Sec. 7860, R.C.M. 1935; Sec. 8-805, R.C.M. 1947; (2)En. Sec. 2895, Civ. C. 1895; re-en. Sec. 5347, Rev. C. 1907; re-en. Sec. 7861, R.C.M. 1921; Cal. Civ. C. Sec. 2185; Based on Field Civ. C. Sec. 1148; re-en. Sec. 7861, R.C.M. 1935; Sec. 8-806, R.C.M. 1947; (3)En. Sec. 2896, Civ. C. 1895; re-en. Sec. 5348, Rev. C. 1907; re-en. Sec. 7862, R.C.M. 1921; Cal. Civ. C. Sec. 2186; Field Civ. C. Sec. 1149; re-en. Sec. 7862, R.C.M. 1935; Sec. 8-807, R.C.M. 1947; R.C.M. 1947, 8-805, 8-806, 8-807.

Cross-References

Due process of law, Art II, sec. 17, Mont. Const.

Accommodations for and care to be taken of passengers, 69-14-205.

Transportation of passengers and property, 69-14-558.

Regulation of health and safety on railroads, 69-14-562.

69-11-204. Carriage of baggage by carriers of persons. (1) Baggage may consist of any articles intended for the use of a passenger while traveling or for his personal equipment.

(2) A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over 100 pounds to a passenger; but if such carrier is a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than 60 pounds of baggage.

(3) The liability of a carrier for baggage received by him with a passenger is the same as that of a common carrier of property.

(4) A common carrier must deliver every passenger's baggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged; except, that where baggage is transported by rail, it must be checked and carried in a regular baggage car and whenever passengers neglect or refuse to have their baggage so checked and transported, it is carried at their risk.

History: (1)En. Sec. 2891, Civ. C. 1895; re-en. Sec. 5343, Rev. C. 1907; re-en. Sec. 7857, R.C.M. 1921; Cal. Civ. C. Sec. 2181; Field Civ. C. Sec. 1144; re-en. Sec. 7857, R.C.M. 1935; Sec. 8-802, R.C.M. 1947; (2)En. Sec. 2890, Civ. C. 1895; re-en. Sec. 5342, Rev. C. 1907; re-en. Sec. 7856, R.C.M. 1921; Cal. Civ. C. Sec. 2180; Based on Field Civ. C. Sec. 1143; re-en. Sec. 7856, R.C.M. 1935; Sec. 8-801, R.C.M. 1947; (3)En. Sec. 2892, Civ. C. 1895; re-en. Sec. 5344, Rev. C. 1907; re-en. Sec. 7858, R.C.M. 1921; Cal. Civ. C. Sec. 2182; Field Civ. C. Sec. 1145; re-en. Sec. 7858, R.C.M. 1935; Sec. 8-803, R.C.M. 1947; (4)En. Sec. 2893, Civ. C. 1895; re-en. Sec. 5345, Rev. C. 1907; re-en. Sec. 7859, R.C.M. 1921; Cal. Civ. C. Sec. 2183; re-en. Sec. 7859, R.C.M. 1935; Sec. 8-804, R.C.M. 1947; R.C.M. 1947, 8-801, 8-802, 8-803, 8-804.

Cross-References

Liability, Title 27, ch. 1, part 7.

Baggage checks, 69-14-210.

69-11-205. Payment of fare by passengers. A common carrier may demand the fare of passengers either at starting or at any subsequent time.

History: En. Sec. 2897, Civ. C. 1895; re-en. Sec. 5349, Rev. C. 1907; re-en. Sec. 7863, R.C.M. 1921; Cal. Civ. C. Sec. 2187; Field Civ. C. Sec. 1150; re-en. Sec. 7863, R.C.M. 1935; R.C.M. 1947, 8-808.

Cross-References

Rules for fare and conduct of passengers, 69-14-206.

Expulsion of passengers refusing to pay fare, 69-14-207.

69-11-206. Lien for payment of fare. A common carrier has a lien upon the baggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the law on liens.

History: En. Sec. 2900, Civ. C. 1895; re-en. Sec. 5352, Rev. C. 1907; re-en. Sec. 7866, R.C.M. 1921; Cal. Civ. C. Sec. 2191; Field Civ. C. Sec. 1153; re-en. Sec. 7866, R.C.M. 1935; R.C.M. 1947, 8-811.

Cross-References

Carrier's lien, 30-7-307.

Enforcement of carrier's lien, 30-7-308.

Liens, Title 71, ch. 3.

69-11-207. Authorization for free transportation. (1) No common carrier of passengers shall directly or indirectly issue, furnish, or give any free ticket, free pass, or free transportation for the carriage or passage of any person within this state, except as permitted in 69-11-208; nor shall any common carrier, in the sale of tickets for transportation at reduced rates, discriminate between persons purchasing the same, except the persons described in 69-11-208.

(2) The words "free ticket", "free pass", and "free transportation", as used in this section and 69-11-208, shall include any ticket, pass, contract, permit, or transportation issued, furnished, or given to any person by any common carrier of passengers for carriage or passage for any other consideration than money paid in the usual way at the rate, fare, or charge open to all who desire to purchase.

(3) Any common carrier or its officers, agents, or representatives violating any of the provisions of this section and 69-11-208 shall be fined in the sum of not less than $10 or more than $300 for each offense, and any person, other than the persons excepted in 69-11-208, who accepts or uses any free ticket, free pass, or free transportation for carriage or passage within this state shall be subject to a like penalty.

History: (1), (2)En. Sec. 1, Ch. 136, L. 1911; re-en. Sec. 6572, R.C.M. 1921; re-en. Sec. 6572, R.C.M. 1935; Sec. 72-616, R.C.M. 1947; (3)En. Sec. 3, Ch. 136, L. 1911; re-en. Sec. 6574, R.C.M. 1921; re-en. Sec. 6574, R.C.M. 1935; Sec. 72-619, R.C.M. 1947; R.C.M. 1947, 72-616, 72-619.

Cross-References

Misdemeanor defined, 45-2-101.

Reimbursement for travel expenses, 69-1-111.

Provision for transportation of passengers for free or reduced rates, 69-11-109.

69-11-208. Classes of persons who may receive free transportation. (1) The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following:

(a) the officers, agents, employees, attorneys, physicians, and surgeons of such common carriers of passengers and the officers and employees of other common carriers upon the exchange of passes or tickets;

(b) the families of the persons included in subsection (1)(a);

(c) the general officers of any such common carriers;

(d) employees of sleeping car and express car companies and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors, newsboys and newsgirls on trains, and baggage agents;

(e) persons injured in wrecks and physicians and nurses attending such persons;

(f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation;

(g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations;

(h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies;

(i) inmates of homes for the reform or rescue of the disadvantaged, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents, of such homes;

(j) superannuated and pensioned employees and members of their families and surviving spouses of such members;

(k) employees crippled and disabled in the service of the common carrier of passengers;

(l) policemen and firefighters of any city, wearing the insignia of their office, within the limits of such city;

(m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations and Young Women's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work;

(n) indigent, destitute, and homeless persons, while being transported by charitable societies or hospitals, and necessary agents and employees in such transportation;

(o) school children, to and from public or parochial schools;

(p) military personnel going to or coming from institutions for their keeping;

(q) executive, judicial, or legislative officers of this state, including the members of the faculty of the different educational institutions of this state;

(r) the furloughed employees of common carriers authorized by 69-11-207 to issue free transportation and members of their families;

(s) persons who have become disabled or infirm in the service of a common carrier or members of families of persons who have become disabled or infirm in the service of any such common carrier;

(t) families of persons killed and surviving spouses who have not remarried and minor children during minority of persons who died while in the service of any such common carrier;

(u) witnesses attending any legal investigation in which such carrier is interested;

(v) the remains of persons who died while in the employment of a common carrier; and

(w) ex-employees traveling for the purpose of entering the service of any such common carrier.

(2) The provisions of this section and 69-11-207 shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. Nothing in this section or 69-11-207 shall be construed to invalidate any existing contract between a street railway company and a city where a condition of a franchise grant requires the furnishing of transportation to policemen, firefighters, and officers while in the performance of official duties.

History: Ap.p. Sec. 2, Ch. 136, L. 1911; re-en. Sec. 6573, R.C.M. 1921; amd. Sec. 1, Ch. 113, L. 1929; amd. Sec. 1, Ch. 78, L. 1933; re-en. Sec. 6573, R.C.M. 1935; amd. Sec. 35, Ch. 535, L. 1975; Sec. 72-617, R.C.M. 1947; Ap.p. Sec. 1, Ch. 9, L. 1929; re-en. Sec. 6573.1, R.C.M. 1935; amd. Sec. 36, Ch. 535, L. 1975; Sec. 72-618, R.C.M. 1947; R.C.M. 1947, 72-617(part), 72-618; amd. Sec. 16, Ch. 43, L. 1979.

Cross-References

Local government officials not to accept free transportation, 7-3-4256.

Reimbursement for travel expenses, 69-1-111.

Provision for transportation of passengers for free or reduced rates, 69-11-109.

69-11-209. Ejection of passengers. (1) A passenger who refuses to pay his fare or conform to any lawful regulation of the carrier may be ejected from the vehicle by the carrier. This must be done with as little violence as possible and at any usual stopping place or near some dwelling house.

(2) After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

History: (1)En. Sec. 2898, Civ. C. 1895; re-en. Sec. 5350, Rev. C. 1907; re-en. Sec. 7864, R.C.M. 1921; Cal. Civ. C. Sec. 2188; Based on Field Civ. C. Sec. 1151; re-en. Sec. 7864, R.C.M. 1935; Sec. 8-809, R.C.M. 1947; (2)En. Sec. 2899, Civ. C. 1895; re-en. Sec. 5351, Rev. C. 1907; re-en. Sec. 7865, R.C.M. 1921; Cal. Civ. C. Sec. 2190; Field Civ. C. Sec. 1152; re-en. Sec. 7865, R.C.M. 1935; Sec. 8-810, R.C.M. 1947; R.C.M. 1947, 8-809, 8-810.

Cross-References

Transport of passengers, 69-11-203.

Expulsion of passengers refusing to pay fare, 69-14-207.

Part 3
Carriers of Messages

69-11-301. Requirements for carriers of messages for reward. (1) A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed or to the person for whom they are intended.

(2) Such carrier by telegraph or telephone must deliver them at such place and to such person provided the place of address or the person for whom they are intended is within a distance of 2 miles from the main office of the carrier in the city or town to which the messages are transmitted. The carrier is not required, in making the delivery, to pay on his route toll or ferriage, but for any distance beyond 1 mile from such office, compensation may be charged for a messenger employed by the carrier.

History: En. Sec. 2860, Civ. C. 1895; re-en. Sec. 5330, Rev. C. 1907; re-en. Sec. 7844, R.C.M. 1921; Cal. Civ. C. Sec. 2161; re-en. Sec. 7844, R.C.M. 1935; R.C.M. 1947, 8-418.

69-11-302. Order of transmission of messages. (1) A carrier of messages by telegraph or telephone must, if it is practicable, transmit every such message immediately upon its receipt. If this is not practicable and several messages accumulate upon his hands, he must transmit them in the following order:

(a) messages from public agents of the United States or of this state on public business;

(b) messages giving information relating to the sickness or death of any person;

(c) messages intended in good faith for immediate publication in newspapers and not for any secret use;

(d) other messages in the order in which they were received.

(2) A common carrier of messages, otherwise than by telegraph or telephone, must transmit them in the order in which he receives them, except messages from agents of the United States or of this state on public business, to which he must always give priority.

History: (1)En. Sec. 2930, Civ. C. 1895; re-en. Sec. 5361, Rev. C. 1907; re-en. Sec. 7875, R.C.M. 1921; Cal. Civ. C. Sec. 2207; Based on Field Civ. C. Sec. 1164; re-en. Sec. 7875, R.C.M. 1935; Sec. 8-820, R.C.M. 1947; (2)En. Sec. 2931, Civ. C. 1895; re-en. Sec. 5362, Rev. C. 1907; re-en. Sec. 7876, R.C.M. 1921; Cal. Civ. C. Sec. 2208; Based on Field Civ. C. Sec. 1165; re-en. Sec. 7876, R.C.M. 1935; Sec. 8-821, R.C.M. 1947; R.C.M. 1947, 8-820, 8-821.

69-11-303. Damages for refused or delayed message. Every person whose message is refused or postponed contrary to the provisions of this chapter is entitled to recover from the carrier his actual damages and $50 in addition thereto.

History: En. Sec. 2932, Civ. C. 1895; re-en. Sec. 5363, Rev. C. 1907; re-en. Sec. 7877, R.C.M. 1921; Cal. Civ. C. Sec. 2209; Based on Field Civ. C. Sec. 1166; re-en. Sec. 7877, R.C.M. 1935; R.C.M. 1947, 8-822.

Cross-References

Damages, Title 27, ch. 1, parts 1 and 2.

69-11-304. Loss of valuable letters. A common carrier is not responsible for loss or miscarriage of a letter or package having the form of a letter containing money or notes, bills of exchange, or other papers of value unless he is informed at the time of its receipt of the value of its contents.

History: En. Sec. 2879, Civ. C. 1895; re-en. Sec. 5341, Rev. C. 1907; re-en. Sec. 7855, R.C.M. 1921; Cal. Civ. C. Sec. 2177; re-en. Sec. 7855, R.C.M. 1935; R.C.M. 1947, 8-710.

Cross-References

Liability, Title 27, ch. 1, part 7.

Part 4
Carriers of Property

Part Cross-References

Taxation of freight line companies, Title 15, ch. 55, part 1.

Report of amount of gasoline hauled, 15-70-209.

Unlawful sale of beer or malt liquor, 16-3-104.

Conveyance of liquors by carrier — restrictions, 16-3-106.

Sale of beer to common carrier, 16-3-232.

Carriers' reports of beer transported, 16-3-235.

Report of shipment and delivery of cigarettes, 16-11-104.

Bills of lading — U.C.C. provisions, Title 30, ch. 7, part 3.

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

Inspection of records — hazardous substances — loads, 50-30-108.

Sale of freight to cover carrier's storage and freight bill, 70-6-411.

Storage of unclaimed property, 70-9-402.

Transportation of bees — certificate of health, 80-6-203.

Expense of cleaning and disinfecting carriers' facilities after storing or transferring pesticides, 81-2-110.

Shipment of fish, game or nongame birds, game animals, fur-bearing animals, skins, or parts, 87-3-114.

69-11-401. General definitions. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

History: En. Sec. 2800, Civ. C. 1895; re-en. Sec. 5305, Rev. C. 1907; re-en. Sec. 7820, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1098; re-en. Sec. 7820, R.C.M. 1935; R.C.M. 1947, 8-410.

69-11-402. Relationship of carrier to consignor and consignee. (1) A carrier must comply with the directions of the consignor or consignee to the same extent as an employee is bound to comply with those of his employer.

(2) When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

History: (1)En. Sec. 2811, Civ. C. 1895; re-en. Sec. 5307, Rev. C. 1907; re-en. Sec. 7822, R.C.M. 1921; Cal. Civ. C. Sec. 2115; Field Civ. C. Sec. 1100; re-en. Sec. 7822, R.C.M. 1935; Sec. 8-412, R.C.M. 1947; (2)En. Sec. 2812, Civ. C. 1895; re-en. Sec. 5308, Rev. C. 1907; re-en. Sec. 7823, R.C.M. 1921; Cal. Civ. C. Sec. 2118; Field Civ. C. Sec. 1101; re-en. Sec. 7823, R.C.M. 1935; Sec. 8-413, R.C.M. 1947; R.C.M. 1947, 8-412, 8-413.

Cross-References

General obligations of employees, Title 39, ch. 2, part 4.

69-11-403. Acceptance of freight. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

History: En. Sec. 2871, Civ. C. 1895; re-en. Sec. 5333, Rev. C. 1907; re-en. Sec. 7847, R.C.M. 1921; Cal. Civ. C. Sec. 2169; Field Civ. C. Sec. 1135; re-en. Sec. 7847, R.C.M. 1935; R.C.M. 1947, 8-702.

69-11-404. Delivery of freight. (1) A carrier of property must deliver it to the consignee at the place to which it is addressed and in the manner usual at that place.

(2) If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

(a) If carried on a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed.

(b) If carried by water, it may be delivered at a wharf or other suitable landing, at or within a reasonable distance from the place of address.

(c) In other cases, it must be delivered to the consignee or his agent, personally, if either can be found with reasonable diligence.

(3) If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post office.

History: (1)En. Sec. 2813, Civ. C. 1895; re-en. Sec. 5309, Rev. C. 1907; re-en. Sec. 7824, R.C.M. 1921; Cal. Civ. C. Sec. 2118; Field Civ. C. Sec. 1103; re-en. Sec. 7824, R.C.M. 1935; Sec. 8-414, R.C.M. 1947; (2)En. Sec. 2814, Civ. C. 1895; re-en. Sec. 5310, Rev. C. 1907; re-en. Sec. 7825, R.C.M. 1921; Cal. Civ. C. Sec. 2119; Based on Field Civ. C. Sec. 1104; re-en. Sec. 7825, R.C.M. 1935; Sec. 8-415, R.C.M. 1947; (3)En. Sec. 2815, Civ. C. 1895; re-en. Sec. 5311, Rev. C. 1907; re-en. Sec. 7826, R.C.M. 1921; Cal. Civ. C. Sec. 2120; Based on Field Civ. C. Sec. 1105; re-en. Sec. 7826, R.C.M. 1935; R.C.M. 1947, 8-414, 8-415, 8-416.

Cross-References

Bills of lading — U.C.C. provisions, Title 30, ch. 7, part 3.

Detriment caused by carrier, 69-11-121.

Bailments, Title 70, ch. 6.

69-11-405. Procedure to terminate carrier's liability. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse on storage, on account of the consignee, and giving notice thereof to him.

History: En. Sec. 2816, Civ. C. 1895; re-en. Sec. 5312, Rev. C. 1907; re-en. Sec. 7827, R.C.M. 1921; Cal. Civ. C. Sec. 2121; Field Civ. C. Sec. 1106; re-en. Sec. 7827, R.C.M. 1935; R.C.M. 1947, 8-417.

Cross-References

Duty of care — contractual limitation of warehouse operator's liability, 30-7-204.

Lien of warehouse operator, 30-7-209, 30-7-210.

Bailments, Title 70, ch. 6.

69-11-406. Payment of freightage. (1) A carrier may require his freightage to be paid upon his receiving the freight, but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

(2) The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall

pay it and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

(3) The consignee of freight is liable for the freightage if he accepts the freight with notice of the intention of the consignor that he should pay it.

History: **(1)En. Sec. 2840, Civ. C. 1895; re-en. Sec. 5321, Rev. C. 1907; re-en. Sec. 7835, R.C.M. 1921; Field Civ. C. Sec. 1115; re-en. Sec. 7835, R.C.M. 1935; Sec. 8-601, R.C.M. 1947; (2)En. Sec. 2841, Civ. C. 1895; re-en. Sec. 5322, Rev. C. 1907; re-en. Sec. 7836, R.C.M. 1921; Cal. Civ. C. Sec. 2137; Field Civ. C. Sec. 1116; re-en. Sec. 7836, R.C.M. 1935; Sec. 8-602, R.C.M. 1947; (3)En. Sec. 2842, Civ. C. 1895; re-en. Sec. 5323, Rev. C. 1907; re-en. Sec. 7837, R.C.M. 1921; Cal. Civ. C. Sec. 2138; Field Civ. C. Sec. 1117; re-en. Sec. 7837, R.C.M. 1935; Sec. 8-603, R.C.M. 1947; R.C.M. 1947, 8-601, 8-602, 8-603.**

69-11-407. Natural increase of freight. No freightage can be charged upon the natural increase of freight.

History: **En. Sec. 2843, Civ. C. 1895; re-en. Sec. 5324, Rev. C. 1907; re-en. Sec. 7838, R.C.M. 1921; Cal. Civ. C. Sec. 2139; Field Civ. C. Sec. 1118; re-en. Sec. 7838, R.C.M. 1935; R.C.M. 1947, 8-604.**

69-11-408. Apportionment of freightage by contract. (1) If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

(2) If a part of the freight is accepted by a consignee without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

History: **(1)En. Sec. 2844, Civ. C. 1895; re-en. Sec. 5325, Rev. C. 1907; re-en. Sec. 7839, R.C.M. 1921; Cal. Civ. C. Sec. 2140; Field Civ. C. Sec. 1119; re-en. Sec. 7839, R.C.M. 1935; Sec. 8-605, R.C.M. 1947; (2)En. Sec. 2845, Civ. C. 1895; re-en. Sec. 5326, Rev. C. 1907; re-en. Sec. 7840, R.C.M. 1921; Cal. Civ. C. Sec. 2141; Field Civ. C. Sec. 1120; re-en. Sec. 7840, R.C.M. 1935; Sec. 8-606, R.C.M. 1947; R.C.M. 1947, 8-605, 8-606.**

Cross-References

Bills of lading — U.C.C. provisions, Title 30, ch. 7, part 3.

69-11-409. Adjustment of freightage for change in time or place of delivery. (1) If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion and the consignee receive the freight only from necessity, the carrier is not entitled to any freightage.

(2) If freight is carried further or more expeditiously than was agreed upon by the parties, the carrier is not entitled to additional compensation and cannot refuse to deliver it, on demand of the consignee, at the place and time of its arrival.

History: **(1)En. Sec. 2846, Civ. C. 1895; re-en. Sec. 5327, Rev. C. 1907; re-en. Sec. 7841, R.C.M. 1921; Cal. Civ. C. Sec. 2142; Field Civ. C. Sec. 1121; re-en. Sec. 7841, R.C.M. 1935; Sec. 8-607, R.C.M. 1947; (2)En. Sec. 2847, Civ. C. 1895; re-en. Sec. 5328, Rev. C. 1907; re-en. Sec. 7842, R.C.M. 1921; Cal. Civ. C. Sec. 2143; Field Civ. C. Sec. 1122; re-en. Sec. 7842, R.C.M. 1935; Sec. 8-608, R.C.M. 1947; R.C.M. 1947, 8-607, 8-608.**

Cross-References

Buyer's rights on improper delivery, 30-2-601.

69-11-410. Carrier's lien for freightage. A carrier has a lien for freightage, which is regulated by the law on liens.

History: En. Sec. 2848, Civ. C. 1895; re-en. Sec. 5329, Rev. C. 1907; re-en. Sec. 7843, R.C.M. 1921; Cal. Civ. C. Sec. 2144; Field Civ. C. Sec. 1123; re-en. Sec. 7843, R.C.M. 1935; R.C.M. 1947, 8-609.

Cross-References

Carrier's lien, 30-7-307.

Enforcement of carrier's lien, 30-7-308.

Liens, Title 71, ch. 3.

69-11-411. Sale of perishable property for freightage. If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him and collect his charges thereon, he may cause the property to be sold in open market to satisfy his lien for freightage.

History: En. Sec. 2917, Civ. C. 1895; re-en. Sec. 5360, Rev. C. 1907; re-en. Sec. 7874, R.C.M. 1921; Cal. Civ. C. Sec. 2204; re-en. Sec. 7874, R.C.M. 1935; R.C.M. 1947, 8-819.

Cross-References

Negligence, 27-1-701, 27-1-702.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Liens, Title 71, ch. 3.

69-11-412. Division of joint rates among carriers. (1) Whenever the commission shall have established a joint rate for the transportation of freight carried over two or more connecting lines of railroad, railway, or common carrier, the railroads, railways, or common carriers affected by such joint rate may, by agreement, provide for the distribution thereof between themselves.

(2) In the event that the railroads, railways, or common carriers affected by such rates shall fail to agree upon the distribution of such rate for a period of 60 days after the order fixing and determining such joint rate shall have been made by the commission, then the commission shall have power and it is hereby made its duty to call a hearing, of which hearing the railroads, railways, or common carriers affected by such joint rate shall have at least 20 days' notice, and upon such hearing the commission shall proceed to fix and determine the pro rata distribution of such joint rate between the railroads, railways, or common carriers affected thereby.

(3) Any railroad, railway company, or common carrier and its officers or agents who shall refuse or fail to comply with any order or rule relative to this section made by the commission shall be subject to a fine of not less than $25 or more than $50. Each day of such refusal or failure shall be deemed a separate offense and shall be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the commission in any court of competent jurisdiction.

History: (1), (2)En. Sec. 2, Ch. 105, L. 1913; re-en. Sec. 3836, R.C.M. 1921; re-en. Sec. 3836, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-158, R.C.M. 1947; (3)En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-163, R.C.M. 1947; R.C.M. 1947, 72-158, 72-163(part).

69-11-413 through 69-11-420 reserved.

69-11-421. Liability of inland carriers for loss. (1) Any common carrier, railroad, or transportation company subject to the provisions of 69-11-421 through 69-11-427, receiving property for transportation from a point in Montana to any other point in Montana, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state when transported on a through bill of lading. No contract, receipt, rule, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.

(2) Except as provided in 69-11-422, any common carrier, railroad, or transportation company receiving property for transportation from a point in Montana to a point in Montana or any common carrier, railroad, or transportation company delivering property so received and transported is liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading or in any contract or rule or in any tariff filed with the public service commission. Any such limitation, without respect to the manner or form in which it is sought to be made, is unlawful and void, except:

(a) an inherent defect, vice, or weakness or a spontaneous action of the property itself;

(b) the act of a public enemy of the United States or of this state;

(c) the act of the law;

(d) an irresistible superhuman cause;

(e) the act or default of the shipper or owner; or

(f) for natural shrinkage.

(3) Nothing in 69-11-421 through 69-11-426 deprives any holder of such receipt or bill of lading of any remedy or right of action.

(4) The liability imposed by this section also applies in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as provided in this part.

(5) A common carrier is liable, even in the cases excepted by subsection (2), if his ordinary negligence exposes the property to the cause of the loss.

History: (1) thru (4)En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; Sec. 8-812.1, R.C.M. 1947; (5)En. Sec. 2911, Civ. C. 1895; re-en. Sec. 5354, Rev. C. 1907; re-en. Sec. 7868, R.C.M. 1921; Cal. Civ. C. Sec. 2195; Field Civ. C. Sec. 1155; re-en. Sec. 7868, R.C.M. 1935; Sec. 8-813, R.C.M. 1947; R.C.M. 1947, 8-812.1(part), 8-813; amd. Sec. 17, Ch. 43, L. 1979.

Cross-References

Negligence, 27-1-701, 27-1-702.

Casualty to identified goods, 30-2-613.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Issuance of bills of lading by railroad station agents — penalty, 69-14-215.

69-11-422. Permissible limitations on liability. (1) The provisions of 69-11-421 respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void shall not apply to:

(a) baggage carried on passenger trains or buses;

(b) property, except ordinary livestock, received for transportation, concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the public service commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property.

(2) (a) In the case listed in subsection (1)(b), such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released and shall not, so far as related to values, be held to be a violation of 69-11-421 through 69-11-427. Any tariff schedule which may be filed with the commission pursuant to the order referred to in subsection (1)(b) shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon. The commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation.

(b) The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

Cross-References

Duty of care — contractual limitation of carrier's liability, 30-7-309.

69-11-423. Meaning of delivering carrier. For the purpose of 69-11-421 through 69-11-427, the delivering carrier shall be construed to be the carrier performing the linehaul service nearest to the point of destination.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

69-11-424. Examination of shipment. (1) The consignee within 15 days after delivery must ask for an inspection of any damaged shipment, and the carrier must make an inspection within 5 working days thereafter.

(2) The consignee shall have the opportunity to examine the condition of the package in which the goods are shipped prior to signing the delivery receipt.

(3) The consignee may detain the driver at consignee's expense, not to exceed a minimum charge to be fixed by the commission, while he examines the shipment for possible concealed damage. During such examination, the freight bill may still be noted as to the extent of the damage or loss, if any. If examination discloses damage, the examination charge may be included in the consignee's claim for damage in proportion to the amount of the claim.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

Cross-References

Buyer's right to inspection of goods, 30-2-513.

69-11-425. Period in which to file claims. It shall be unlawful for any such receiving or delivering common carrier to provide, by rule, contract, or otherwise, a shorter period for the filing of claims than 9 months and for the institution of suits than 2 years, such period for institution of suits to be computed from the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

Cross-References

Statutes of limitations, Title 27, ch. 2.

69-11-426. Processing of claims for damage. (1) Carriers must acknowledge receipt of each claim within 30 days and promptly investigate each claim and either pay or decline the claim within 120 days from the date of receipt thereof or provide an explanation for the delay in disposition. An assertion that the claim is still being investigated shall not constitute sufficient explanation.

(2) In the event a claimant or a carrier successfully prosecutes or defends a claim for loss or damage under 69-11-421 through 69-11-426, wherein it is alleged the carrier has not disposed of the claim within 120 days or explained the delay and the claimant has inquired of the carrier regarding the delay, in writing, within the 120-day period, then the court exercising jurisdiction may, at its discretion, award reasonable attorney fees to the successful party, but not to exceed $500.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

C.I.F. or C.&F. — warranty of condition on arrival, 30-2-321.

Who can sue third parties for injury to goods, 30-2-722.

69-11-427. Liability between carriers. The common carrier, railroad, or transportation company issuing such receipt or bill of lading or delivering such property so received and so transported shall be entitled to recover, from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property.

History: En. 8-812.2 by Sec. 2, Ch. 168, L. 1975; R.C.M. 1947, 8-812.2.

Cross-References

Costs, Title 25, ch. 10.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

69-11-428. Liability for delay. A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

History: En. Sec. 2912, Civ. C. 1895; re-en. Sec. 5355, Rev. C. 1907; re-en. Sec. 7869, R.C.M. 1921; Cal. Civ. C. Sec. 2196; Field Civ. C. Sec. 1156; re-en. Sec. 7869, R.C.M. 1935; R.C.M. 1947, 8-814.

Cross-References

Negligence, 27-1-701, 27-1-702.

Damages for carrier's delay, 69-11-121.

69-11-429. Liability for valuable cargo. A common carrier of gold, silver, platina, or precious stones or of imitations thereof in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind is not liable for more than $50 upon the loss or injury of any one package of such articles unless he has notice upon his receipt thereof by mark upon the package or otherwise of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

History: **En. Sec. 2913, Civ. C. 1895; re-en. Sec. 5356, Rev. C. 1907; re-en. Sec. 7870, R.C.M. 1921; Cal. Civ. C. Sec. 2200; Field Civ. C. Sec. 1160; re-en. Sec. 7870, R.C.M. 1935; R.C.M. 1947, 8-815.**

Cross-References

C.I.F. and C.&F. terms, 30-2-320.

Bills of lading — U.C.C. provisions, Title 30, ch. 7, part 3.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

CHAPTER 12

MOTOR CARRIERS

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Chapter Cross-References

Operation of municipal busline, 7-14-4403.

Motor carriers' reports of beer transported, 16-3-235.

Perfection of security interest in rolling stock, 30-9-409.

Fees under this chapter applicable to driveaway and towaway transportation, 61-4-304.

Size — weight — load, title 61, ch. 10.

Supervision of motor carriers, 69-12-203.

Part 1
General Provisions

69-12-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means the certificate of public convenience and necessity issued under this chapter.

(3) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(4) "Corporation" means a corporation, company, association, or joint-stock association.

(5) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(6) "Garbage" means ashes, trash, waste, refuse, rubbish, organic or inorganic matter that is transported to a licensed transfer station, licensed landfill, licensed municipal solid waste incinerator, or licensed disposal well. The term does not include wastewater and waste tires.

(7) "Household goods" means any of the following:

(a) personal effects and property used or to be used in a dwelling when they are a part of the equipment or supply of the dwelling. The term does not include property moving from a factory or store unless the property is purchased by a householder for use in a dwelling and is transported at the request of the householder.

(b) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when those items are a part of the stock, equipment, or supply of the stores, offices, museums, institutions, hospitals, or other establishments. The term does not include the stock-in-trade of an establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment or a portion of the establishment from one location to another.

(c) articles, including objects of art, displays, and exhibitions that because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods and other similar articles.

(8) "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of passengers, household goods, or garbage for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking.

(9) "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

(10) "Person" means an individual, firm, or partnership.

(11) "Public highway" means a public street, road, highway, or way in this state.

(12) "Railroad" means the movement of cars on rails, regardless of the motive power used.

(13) "Recyclable" means any material diverted from the solid waste stream that can be reused in the production of heat or energy or as raw material for new products and for which markets exist.

History: **En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. 1, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part); amd. Sec. 18, Ch. 43, L. 1979; amd. Sec. 1, Ch. 341, L. 1991; amd. Sec. 1, Ch. 481, L. 1991; amd. Sec. 1, Ch. 364, L. 1993; amd. Sec. 8, Ch. 358, L. 1995.**

Cross-References

Corporations, Partnerships, and Associations, Title 35.

Highways and Transportation, Title 60.

Railroad defined, 61-1-317, 69-14-101.

69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or

(k) the transportation of disabled or elderly persons provided by private, nonprofit organizations. As used in this subsection:

(i) "disabled" means an individual who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) "elderly" means a person 60 years of age or older; and

(iii) "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) This chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part); amd. Sec. 1, Ch. 514, L. 1979; amd. Sec. 1, Ch. 227, L. 1981; amd. Sec. 1, Ch. 27, L. 1983; amd. Sec. 1, Ch. 75, L. 1983; amd. Sec. 2, Ch. 160, L. 1983; amd. Sec. 1, Ch. 584, L. 1983; amd. Sec. 1, Ch. 178, L. 1985; amd. Sec. 1, Ch. 322, L. 1991; amd. Sec. 2, Ch. 481, L. 1991; amd. Sec. 2, Ch. 364, L. 1993; amd. Sec. 15, Ch. 283, L. 1995; amd. Sec. 9, Ch. 358, L. 1995.

Cross-References

School buses and transportation, Title 20, ch. 10, part 1.

Regulation of armored car services, Title 37, ch. 60.

Regulation of logging trucks, 61-9-414.

Regulation of tow trucks, 61-9-416.

Air carrier defined, 67-1-101.

69-12-103. Repealed. Sec. 12, Ch. 358, L. 1995.

History: (1)En. Sec. 23, Ch. 184, L. 1931; re-en. Sec. 3847.23, R.C.M. 1935; Sec. 8-123, R.C.M. 1947; (2)En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; Sec. 8-116, R.C.M. 1947; R.C.M. 1947, 8-116(b), 8-123; amd. Sec. 1, Ch. 106, L. 1991.

69-12-104. Determination of operation between fixed termini or over a regular route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini or over a regular route or otherwise under this chapter is a question of fact to be determined by the commission.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part).

69-12-105. Nature of accommodative transportation. An accommodative transportation movement by a person not in the transportation business is not a service for hire even though the persons owning the property transported or persons transported share in the cost or pay for the movement.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part).

69-12-106. Acts indicative of status as motor carrier. Any person or corporation maintaining a public motor vehicle stand or by sign, symbol, or device or vehicle or clothing or by advertisement holding forth transportation for compensation or soliciting the transportation of persons or property for compensation among the public or soliciting for trips for compensation or providing transportation service to the public under the guise of leasing or buy-and-sell arrangements shall be deemed, prima facie, a "motor carrier" subject to this chapter. The burden of proof shall be on such person or corporation to disprove such status.

History: En. Sec. 21, Ch. 184, L. 1931; re-en. Sec. 3847.21, R.C.M. 1935; amd. Sec. 3, Ch. 204, L. 1963; R.C.M. 1947, 8-121.

69-12-107. Status of private carriers under motor carrier laws. Nothing in this chapter shall be construed as converting or attempting to convert a private carrier into a common carrier. It is hereby declared that this chapter is intended primarily as a regulation of the public highways of the state.

History: En. Sec. 22, Ch. 184, L. 1931; re-en. Sec. 3847.22, R.C.M. 1935; R.C.M. 1947, 8-122.

Cross-References

Classification — highways and roads, 60-1-201.

69-12-108. Violations. Any motor carrier subject to the provisions of this chapter, as amended, or whenever any such motor carrier is a corporation, any director or officer thereof; any receiver, trustee, lessee, agent, or person acting for or employed by such corporation; any person, corporation, or association or officer, agent, or employee thereof; or any broker of property or officer, agent, or employee thereof who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of this chapter, as amended, or who fails to obey, observe, or comply with any lawful order, decision, rule, direction, demand, or requirement of the commission or any part of the provisions thereof is:

(1) subject to a civil penalty, to be collected and deposited to the general fund by the commission after notice and hearing, in an amount not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense; or

(2) subject, upon conviction in a justice's court, to a fine of not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense.

History: En. Sec. 19, Ch. 184, L. 1931; re-en. Sec. 3847.19, R.C.M. 1935; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967; amd. Sec. 1, Ch. 68, L. 1971; amd. Sec. 1, Ch. 282, L. 1977; R.C.M. 1947, 8-119; amd. Sec. 19, Ch. 43, L. 1979; amd. Sec. 1, Ch. 330, L. 1979.

Cross-References

Agency, Title 28, ch. 10.

Misdemeanor defined, 45-2-101.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Enforcement procedures, 69-12-209.

Revocation of certificate, 69-12-327.

Failure to display ownership identification — penalty, 69-12-408.

Part 2
Role of Commission

69-12-201. Supervision and regulation of motor carriers. (1) The commission has the power and authority and it is its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A and Class B motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, and affairs of all motor carriers;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by motor carriers;

(e) supervise and regulate motor carriers in all matters affecting the relationship between motor carriers and the traveling and shipping public.

(2) The commission may, by general order or otherwise, prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

(3) The commission may fix and determine reasonable maximum or minimum rates for the operations of any Class C motor carrier when rates are required for the best interests of public transportation.

History: (1)(a) thru (1)(e), (3)En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-103, R.C.M. 1947; (1)(f), (1)(g), (2)En. Sec. 2, Ch. 227, L. 1981; (4)En. Sec. 1, Ch. 201, L. 1961; Sec. 8-104.1, R.C.M. 1947; R.C.M. 1947, 8-103(part), 8-104.1; amd. Sec. 3, Ch. 226, L. 1981; amd. Sec. 2, Ch. 227, L. 1981; amd. Sec. 1, Ch. 686, L. 1985; amd. Sec. 3, Ch. 481, L. 1991; amd. Sec. 3, Ch. 364, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Fees, 69-12-423.

69-12-202. Encouragement of common carrier motor transportation. To fully secure adequate motor transportation facilities for all users of such service and to secure the public advantages thereof, the commission shall encourage a system of common carrier motor transportation within the state for the convenience of the shipping public. The maintenance of a common carrier motor transportation system within Montana is hereby declared to be a public purpose.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(part).

69-12-203. Supervisor of motor carriers. (1) The commission shall appoint a supervisor of motor carriers who shall have general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor shall be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. He shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities in behalf of the commission, including the investigation and prosecution of violations of this chapter, as amended, or the rules or orders prescribed thereunder by the commission.

(3) The supervisor and whatever field inspectors may be employed by the commission to assist him shall be deemed peace officers for the purpose of making arrests in connection with violations of this chapter, as amended, and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo,

driver, routing, or ownership of such vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(b); amd. Sec. 20, Ch. 43, L. 1979; amd. Sec. 1, Ch. 331, L. 1979; amd. Sec. 4, Ch. 226, L. 1981; amd. Sec. 2, Ch. 686, L. 1985.

Cross-References

Enforcement of motor carriers law, 44-1-1005.

Arrest warrants, Title 46, ch. 6, part 2.

Bail, Title 46, ch. 9.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

69-12-204. General administrative procedure. Insofar as possible and applicable, the provisions of statutes prescribing the procedure before the commission in cases involving rates, facilities, service, or other affairs of railroads in this state, including forms of applications, complaints, answers, orders, and notices of hearing; the conducting of hearings; compelling the attendance and testimony of witnesses and the production of records, data, and information; and the preparation, recording, and serving of reports and orders of the commission, shall be followed and shall govern in all proceedings and investigations before the commission in cases arising in connection with the performance by the commission of its duties or the exercise of its jurisdiction under the provisions of this chapter.

History: En. Sec. 14, Ch. 184, L. 1931; re-en. Sec. 3847.14, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-114(part).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Public transportation issues — Department of Transportation to represent state, 60-21-101.

Railroads, Title 69, ch. 14.

69-12-205. Rules to reflect differences between carrier classes. All rules in relation to schedules, service, tariffs, rates, facilities, accounts, and reports must have due regard for the differences existing between Class A, Class B, Class C, and Class D motor carriers, as defined in this chapter, and must be just, fair, and reasonable to the classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by Class A and Class B motor carriers for the carrying of persons or property, or both, the commission shall take into consideration the kind and character of service to be performed, the public necessity of the service, and the effect of the tariff and rates upon other transportation agencies, if any, and shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(c); amd. Sec. 1, Ch. 352, L. 1979; amd. Sec. 4, Ch. 481, L. 1991; amd. Sec. 4, Ch. 364, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Classification and motor carrier certificates, Title 69, ch. 12, part 3.

69-12-206. Investigations by commission. (1) Any investigation, inquiry, or hearing which the commission has power to undertake or to hold under the provisions of this chapter may be undertaken or held by or before any member of the commission or by and before any agent or examiner of the commission designated for the purpose by the commission. Every finding, order, or decision made by a member of the commission or agent or examiner of the commission so designated, together with a statement in writing of the reasons therefor (which statement must be included in the finding, order, or decision, pursuant to the investigation, inquiry, or hearing) when approved and confirmed by the commission and ordered filed in its office shall be considered the finding, order, or decision of the commission.

(2) An agent or examiner of the commission designated as aforesaid may administer oaths, examine witnesses, and receive evidence.

History: **En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; R.C.M. 1947, 8-111(2).**

Cross-References

Investigation of operation under carrier agreement, 69-12-603.

69-12-207. Temporary operating authority. (1) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the commission may, in its discretion upon affidavits or such other evidence as it may deem sufficient and without hearings or other proceedings, grant temporary authority for such service by a common carrier by motor vehicle or a contract carrier by motor vehicle, as the case may be. Such affidavits or other evidence as the commission may determine must accompany the application for temporary authority. The affidavits or other evidence must specify in detail the reason for supporting the application for temporary authority and the term within which the temporary authority would be required.

(2) Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but for not more than 90 days. Temporary authority initially granted pursuant to the provisions hereof may be extended by the commission without hearings or other proceedings, but in no case shall a grant of temporary authority with extensions exceed an aggregate of 120 days.

(3) Neither the granting of temporary authority nor operation thereunder shall create any presumption that corresponding permanent authority will be granted thereafter. Transportation service rendered under such temporary authority shall be subject to all applicable provisions of this chapter and to the rules and requirements of the commission thereunder.

History: **En. Sec. 1, Ch. 148, L. 1971; amd. Sec. 1, Ch. 231, L. 1973; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-131.**

Cross-References

Affidavits, Title 26, ch. 1, part 10.

69-12-208. Provisions for bus service. The commission, after 10 days' notice and public hearing, shall have the power to compel all motor carrier bus lines under its jurisdiction to furnish, provide, and maintain such service, instrumentalities, equipment, facilities, and time schedules as shall promote the safety, health, comfort, and convenience of its passengers and employees and the public and as shall in all respects be adequate, efficient, just, and reasonable.

History: En. Sec. 2, Ch. 143, L. 1943; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-129.

69-12-209. Enforcement procedures. (1) Orders and final determinations of the commission in all proceedings pursuant to the provisions of this chapter shall be enforced in the manner provided for the enforcement of orders of the commission by the provisions of parts 1, 3, 4, and 8 of chapter 14.

(2) If any motor carrier shall operate in violation of the provisions of this chapter or shall fail or neglect to obey any lawful order of the commission, the commission or any party injured may apply to any court of competent jurisdiction, in any county where such motor carrier is engaged in business, for the enforcement of this chapter or such order. The court shall enforce obedience thereto by writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier or its officers, agents, employees, or representatives from further violation of this chapter or such order or to enjoin upon it or them obedience to the same.

History: En. Sec. 14, Ch. 184, L. 1931; re-en. Sec. 3847.14, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-114(part).

Cross-References

Injunctions, Title 27, ch. 19.

69-12-210. Complaints. (1) The commission has jurisdiction to conduct investigations and hear complaints to determine whether a motor carrier has violated any of the commission's rules or orders or any provision of this chapter.

(2) Following an opportunity for hearing and upon a finding that a motor carrier has violated any of the commission's rules or orders or any provision of this chapter, the commission may suspend or revoke the motor carrier's certificate of operating authority or impose any penalty provided for under 69-12-108.

History: En. Sec. 2, Ch. 156, L. 1993.

Part 3

Classification and Motor Carrier Certificates

69-12-301. Classification of motor carriers. (1) Motor carriers are divided into four classes to be known as:

(a) Class A motor carriers;

(b) Class B motor carriers;

(c) Class C motor carriers; and

(d) Class D motor carriers.

(2) Class A motor carriers include all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

(3) Class B motor carriers include all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a regular route.

(4) Class C motor carriers include all motor carriers where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.

(5) Class D motor carriers include all motor carriers operating motor vehicles transporting garbage.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 3, Ch. 341, L. 1991; amd. Sec. 5, Ch. 481, L. 1991; amd. Sec. 5, Ch. 364, L. 1993; amd. Sec. 10, Ch. 358, L. 1995.

Cross-References
Fees, 69-12-423.

69-12-302. Class C contract requirements. (1) A Class C motor carrier may operate under no more than six contracts that are effective at any given time, and each contract must be effective for a minimum of 180 days. Before transportation service may commence, pertinent contract information must be furnished to the commission for each contract on forms prescribed by the commission. The commission shall retain a duplicate of the information in its files, and a copy of the form, confirmed by the commission, must be kept in the cab of the motor carrier when operating under that contract.

(2) All Class C motor carriers shall annually submit to the commission the names and addresses of all persons, corporations, or other legal entities with whom the Class C carrier has executed a contract, charter, agreement, or undertaking for the distribution, delivery, or collection of wares, merchandise, or commodities or for transporting persons.

(3) The provisions of this section do not apply to solid waste contractors, transportation of recyclables, household goods carriers, or house movers, as defined by the department of public service regulation, or any carrier whose authority is limited to the pickup and delivery of property and is confined by certificate to transportation within a distance of 50 miles or less from a particular location. A carrier whose property authority is incidental to the transportation of persons is not included in the exemption under this subsection.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 1, Ch. 24, L. 1979; amd. Sec. 1, Ch. 393, L. 1987; amd. Sec. 1, Ch. 203, L. 1991; amd. Sec. 2, Ch. 341, L. 1991.

Cross-References
Movement of structures, Title 69, ch. 4, part 6.

69-12-303 through 69-12-310 reserved.

69-12-311. Class A motor carrier certificate. (1) No Class A motor carrier shall operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate declaring that public convenience and necessity require such operation.

(2) A motor carrier making application for such certificate shall do so in writing, separately for each route, which petition shall be verified by the applicant and shall specify the following matters:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the public highway or highways over which and the fixed termini between which or the regular route or routes over which it intends to operate;

(c) the kind of transportation, whether passenger, freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic;

(d) the proposed time schedule;

(e) a schedule of the tariff or rates desired to be charged for the transportation of freight and/or passengers;

(f) a complete and detailed description of the property proposed to be devoted to the public service;

(g) a detailed statement showing the assets and liabilities of such applicant; and

(h) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a filing fee to be set by rule of the commission.

History: En. Sec. 8, Ch. 184, L. 1931; re-en. Sec. 3847.8, R.C.M. 1935; amd. Sec. 22, Ch. 121, L. 1965; amd. Sec. 1, Ch. 243, L. 1974; amd. Sec. 1, Ch. 472, L. 1977; R.C.M. 1947, 8-108; amd. Sec. 11, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fees, 69-12-423.

69-12-312. Class B motor carrier certificate. (1) No Class B motor carrier shall operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate that public convenience and necessity require such operations.

(2) A motor carrier making application for such permit shall do so in writing, separately for each locality for which consideration is desired, which petition shall be verified and shall specify the following matters:

(a) name and address of the applicant and the names and addresses of its officers, if any;

(b) the kind of transportation, whether passenger, freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic;

(c) the locality and character of operations to be conducted;

(d) a schedule of the tariff of rates desired to be charged for the transportation of freight and/or passengers;

(e) a complete and detailed description of the property proposed to be devoted to the public service;

(f) a detailed statement showing the assets and liabilities of such applicant; and

(g) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a filing fee to be set by rule of the commission.

History: En. Sec. 9, Ch. 184, L. 1931; re-en. Sec. 3847.9, R.C.M. 1935; amd. Sec. 23, Ch. 121, L. 1965; amd. Sec. 2, Ch. 243, L. 1974; amd. Sec. 2, Ch. 472, L. 1977; R.C.M. 1947, 8-109; amd. Sec. 12, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Fees, 69-12-423.

69-12-313. Class C motor carrier certificate. (1) No Class C motor carrier, except any Class C motor carrier operating pursuant to the terms and conditions of a contract as provided in 69-12-324, shall operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities or for the transportation of persons on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate that public convenience and necessity require such operation.

(2) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the public highways or highways over which and the fixed termini between which or the route or routes over which it intends to operate, if the same are fixed, or the particular city, town, station, or locality from and/or to which the applicant intends to operate;

(c) the kind of transportation and the character of the goods, wares, merchandise, or commodities to be distributed, delivered, or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of such vehicles, to be used in such service of distribution, delivery, or collection; and

(d) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a fee to be set by rule of the commission.

(4) The submission of a Class C motor carrier application must be accompanied by the names and addresses of any person, corporation, or other legal entity with whom the applicant has executed a contract for the distribution, delivery, or collection of wares, merchandise, or commodities or transporting persons. Such contracts must be in writing, executed by the parties and submitted to the commission for examination.

History: (1) thru (3)En. Sec. 10, Ch. 184, L. 1931; re-en. Sec. 3847.10, R.C.M. 1935; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 472, L. 1977; Sec. 8-110, R.C.M. 1947; (4)En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; R.C.M. 1947, 8-110(1), 8-111(part); amd. Sec. 13, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Fees, 69-12-423.

69-12-314. Class D motor carrier certificate. (1) Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the commodities described in 69-12-301(5). Class D carriers when applying for a new or additional authority shall file an application with the commission in accordance with the requirements of this chapter and the rules of the commission.

(2) A motor carrier may not possess a Class D motor carrier certificate or operate as a Class D motor carrier unless the motor carrier actually engages in the transportation of garbage on a regular basis as part of the motor carrier's usual business operation.

History: **En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 1, Ch. 387, L. 1979; amd. Sec. 258, Ch. 42, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 42 in (2) substituted "garbage" for "ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter". Amendment effective March 12, 1997.

Cross-References

Required records and reports, 69-12-407.

Fees, 69-12-423.

69-12-315. Repealed. Sec. 10, Ch. 364, L. 1993.

History: **En. Secs. 6, 9, Ch. 481, L. 1991.**

69-12-316 through 69-12-320 reserved.

69-12-321. Hearing on application for motor carrier certificate. (1) Upon the filing of an application by a Class A, Class B, Class C, or Class D motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract as provided in 69-12-324, or upon the filing of a request for a transfer of authority, the commission shall give notice of the filing of the application to any interested party. The commission shall fix a time and place for a hearing on the application whenever a protest or a request for a hearing is received. The hearing must be set for a date not later than 60 days after receipt of a protest or a hearing request by the commission. Whenever no protests or hearing requests are received, the commission may act on the application without a hearing as prescribed by commission rules.

(2) A motor carrier referred to in 69-12-322, the department of transportation, the governing board or boards of any county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) The contracting parties referred to in 69-12-313(4) must appear and offer testimony in support of the applicant.

(4) However, an application by a Class A, Class B, Class C, or Class D motor carrier for a certificate may be disallowed without a public hearing when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities have materially changed since the previous public investigation and finding and that public convenience and necessity now require the motor carrier operation.

History: **Ap. p. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-111.1, R.C.M. 1947; Ap. p. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111,**

R.C.M. 1947; R.C.M. 1947, 8-111(part), 8-111.1(part); amd. Sec. 1, Ch. 25, L. 1979; amd. Sec. 1, Ch. 55, L. 1979; amd. Sec. 14, Ch. 588, L. 1983; amd. Sec. 11, Ch. 481, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 364, L. 1993.

69-12-322. Notice of hearing. (1) Whenever a hearing is scheduled, whether as a result of a protest or request or upon the commission's own motion, the commission shall cause a copy of the petition and notice of hearing to be served upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of the certificate and shall notify any other affected party at least 10 days before the date of hearing.

(2) Notice of the hearing must be published:

(a) in the legal advertising section of a local newspaper or newspapers determined by the commission to have a circulation sufficient to reach the consuming public in the area under consideration for applications for Class C authority and geographically limited Class B authority; and

(b) in appropriate newspapers determined by the commission to have sufficient statewide circulation in the case of applications for Class A authority and geographically broad contemplated Class B authority.

History: En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; R.C.M. 1947, 8-111(part); amd. Sec. 2, Ch. 55, L. 1979; amd. Sec. 12, Ch. 481, L. 1991; amd. Sec. 7, Ch. 364, L. 1993.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-12-323. Decision on application. (1) The commission must issue, within 180 days from and after the date of the completed filing of said application, its finding, order, or decision on said application and the evidence presented in support thereof at the time of said hearing. The commission may extend the foregoing time for decision to a date requested by the applicant.

(2) (a) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

(b) For purposes of Class D certificates, a determination of public convenience and necessity may include a consideration of competition.

(3) The commission may issue the certificate as prayed for or issue it for the partial exercise only of the privilege sought and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. When a certificate has once been issued to a motor carrier as provided in this part, such certificate

shall continue in force until terminated by the commission for cause as herein provided or until terminated by the owner's failure to comply with 69-12-402.

History: (1)En. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-111.1, R.C.M. 1947; (2)En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; (3)En. Sec. 12, Ch. 184, L. 1931; re-en. Sec. 3847.12, R.C.M. 1935; Sec. 8-112, R.C.M. 1947; R.C.M. 1947, 8-111(part), 8-111.1(part), 8-112(part); amd. Sec. 1, Ch. 54, L. 1979; amd. Sec. 1, Ch. 76, L. 1983.

Cross-References

Revocation of certificate, 69-12-327.

69-12-324. Special provisions when federal or state contract involved. (1) The presentation of the written contract to the commission shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state government contracts. Subject to the provisions of this section, a transportation movement is considered to be:

(a) the transportation for hire of persons between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof; or

(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof.

(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state government contract may be issued by the commission upon receipt of an executed copy of the United States government or state government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the commission to fix a time and place for public hearing.

(3) The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state government contract, is authorized only for the duration of the United States government or state government contract concerned. The certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government or state government contract.

History: En. Sec. 10, Ch. 184, L. 1931; re-en. Sec. 3847.10, R.C.M. 1935; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 476, L. 1977; R.C.M. 1947, 8-110(2); amd. Sec. 15, Ch. 588, L. 1983; amd. Sec. 2, Ch. 178, L. 1985.

Cross-References

Waste and litter control, Title 75, ch. 10.

69-12-325. Transfer of certificate or privilege. Any right, privilege, or certificate held, owned, or obtained by any motor carrier may be sold, assigned, leased, transferred, and inherited as other property only by the authorization of the commission.

History: En. Sec. 12, Ch. 184, L. 1931; re-en. Sec. 3847.12, R.C.M. 1935; R.C.M. 1947, 8-112(part).

69-12-326. Lease of certificate. (1) An authorized carrier operating within the state may lease its certificate or any integral segment thereof to another carrier only by approval of the commission. The contract or lease under which the certificate is leased must be in writing and approved by the commission prior to any operation under the certificate. The contract or lease must specify:

(a) the period for which a certificate is to be leased, which shall not be less than 30 days;

(b) the compensation to be paid;

(c) the time or date upon which the lease will commence and terminate; and

(d) the signatures of the parties thereto.

(2) Operation under the certificate is prohibited until approved by the commission in writing. During the period of the contract or lease, transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner (lessor) are prohibited.

History: En. 8-103.3 by Sec. 1, Ch. 107, L. 1969; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103.3.

69-12-327. Revocation of certificate — right of review. (1) If it appears that a certificate holder is violating or refusing to observe any of the commission's orders or rules or any provision of Title 69, as amended, the commission may issue an order to the certificate holder to show cause why the certificate should not be revoked. If the certificate holder fails to appear to show cause as ordered by the commission, the certificate may be revoked without a hearing. If the holder does appear to show cause, the commission may:

(a) dismiss the proceeding, notifying the holder that the certificate is not revoked; or

(b) hold a hearing on the question of revocation, notifying the holder of the time and place for the hearing.

(2) The holder of any such certificate or privilege shall have all rights of rehearing and review as to such order of the commission as is provided in this chapter.

History: En. Sec. 7, Ch. 184, L. 1931; re-en. Sec. 3847.7, R.C.M. 1935; R.C.M. 1947, 8-107; amd. Sec. 1, Ch. 31, L. 1979.

Cross-References

Effect of failure to pay compensation, fees, or charges, 69-12-422.

69-12-328 through 69-12-330 reserved.

69-12-331. Special provisions relating to transportation of buildings. A certificate that permits the transportation of a building other than a mobile home or a manufactured home, as defined in 15-1-101, from its existing foundation to a new location must permit transportation throughout the state and may not restrict transportation to a particular region of the state.

History: En. Sec. 1, Ch. 593, L. 1979; amd. Sec. 1, Ch. 173, L. 1991; amd. Sec. 24, Ch. 200, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 200 near middle, after "mobile home", inserted "or a manufactured home". Amendment effective January 1, 1998.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-12-332 reserved.

69-12-333. Repealed. Sec. 10, Ch. 364, L. 1993.

History: En. Sec. 7, Ch. 481, L. 1991.

69-12-334. Repealed. Sec. 10, Ch. 364, L. 1993.

History: En. Sec. 8, Ch. 481, L. 1991.

69-12-335. Repealed. Sec. 10, Ch. 364, L. 1993.

History: En. Sec. 10, Ch. 481, L. 1991.

Part 4
Requirements for Motor Carriers

69-12-401. Compliance with state law. It shall be unlawful for any corporation or person, its or his officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this chapter.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(b).

Cross-References

Classification of highways, 60-1-201.

69-12-402. Compliance with commission rules. No certificate shall be issued or remain in force unless the holder thereof shall comply with such rules of the commission as it shall adopt governing the filing of bonds, policies of insurance, or such security or agreement in such form and adequate amount and conditioned as the commission may require for:

(1) the prompt payment of all compensation or fees due the state under the provisions of this chapter; and

(2) the payment of any final judgment which may be rendered against any such motor carrier arising out of the death of or injury to any passenger or injury to other persons or property as a result of any negligent operation of the motor vehicles or such motor carrier, with power in the commission to permit self-insurance whenever, in its opinion, the financial ability of the motor carrier warrants.

History: En. Sec. 13, Ch. 184, L. 1931; re-en. Sec. 3847.13, R.C.M. 1935; R.C.M. 1947, 8-113.

Cross-References

Liability, Title 27, ch. 1, part 7.

Suretyship, Title 28, ch. 11, part 4.

Motor vehicle financial responsibility, Title 61, ch. 6, part 1.

69-12-403. Discontinuance of service. No Class A or Class B motor carrier shall abandon or discontinue any service established under this chapter without an order of the commission therefor.

History: En. Sec. 5, Ch. 184, L. 1931; re-en. Sec. 3847.5, R.C.M. 1935; R.C.M. 1947, 8-105.

69-12-404. Suspension of intrastate operating authority by petition. (1) Every motor carrier as defined within this chapter may petition the commission in writing to suspend its intrastate operating authority for a period not to exceed 6 months. An additional 6 months' suspension may be requested and granted, but no other. Such suspension may be granted by the commission upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation.

(2) The suspension of any intrastate operating authority of any carrier as provided for in subsection (1) for a period of 12 consecutive months shall be deemed to establish a prima facie presumption of absence of public convenience and necessity. If after notice and hearing the carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate of public convenience and necessity.

History: (1)En. 8-107.1 by Sec. 1, Ch. 173, L. 1973; Sec. 8-107.1, R.C.M. 1947; (2)En. 8-107.2 by Sec. 1, Ch. 236, L. 1973; Sec. 8-107.2, R.C.M. 1947; R.C.M. 1947, 8-107.1, 8-107.2.

Cross-References

Presumptions, Rule 301, M.R.Ev. (see Title 26, ch. 10).

69-12-405. Repealed. Sec. 12, Ch. 358, L. 1995.

History: Ap. p. Sec. 2, Ch. 275, L. 1971; Sec. 8-101.1, R.C.M. 1947; Ap. p. Sec. 3, Ch. 275, L. 1971; amd. Sec. 1, Ch. 233, L. 1973; amd. Sec. 2, Ch. 315, L. 1974; Sec. 8-101.2, R.C.M. 1947; R.C.M. 1947, 8-101.1, 8-101.2.

69-12-406. Restriction on transportation of certain waste. Except as provided in 69-12-324, a Class A, B, or C carrier may not be authorized or permitted to transport garbage within the state. This restriction does not apply to recyclables.

History: En. 8-102.1 by Sec. 2, Ch. 138, L. 1977; R.C.M. 1947, 8-102.1(part); amd. Sec. 16, Ch. 588, L. 1983; amd. Sec. 4, Ch. 341, L. 1991; amd. Sec. 259, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in first sentence substituted "garbage" for "ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Waste and litter control, Title 75, ch. 10.

69-12-407. Records and reports. (1) All records, books, accounts, and files of every Class A, Class B, Class C, and Class D motor carrier in this state, so far as they relate to the business of transportation conducted by the motor carrier, must at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of Class A, Class B, Class C, and Class D motor carriers, and every motor carrier authorized to operate in accordance with the provisions of this chapter shall keep its records, books, and accounts according to the uniform system, insofar as possible.

(2) Before April 1 of each year, unless this deadline has been extended for good cause by the commission, every motor carrier authorized to engage in business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission. Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements

giving to the commission information it requires in order to perform its duties under this chapter.

(3) In addition to other reporting requirements, the commission shall require the holder of a Class D motor carrier certificate to provide sufficient information to show that the carrier is entitled to possess the Class D motor carrier certificate under the requirements of 69-12-314.

History: En. Sec. 18, Ch. 184, L. 1931; re-en. Sec. 3847.18, R.C.M. 1935; amd. Sec. 1, Ch. 232, L. 1973; amd. Sec. 4, Ch. 472, L. 1977; R.C.M. 1947, 8-118; amd. Sec. 1, Ch. 353, L. 1979; amd. Sec. 2, Ch. 387, L. 1979; amd. Sec. 13, Ch. 481, L. 1991; amd. Sec. 8, Ch. 364, L. 1993.

Cross-References

Fees, 69-12-423.

Maintenance of records, 69-12-601.

69-12-408. Identification of ownership of certain large motor vehicles. (1) (a) A person may not operate a motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds upon the highways of the state unless there is displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name or trade name and city and state of or the name or trade name and the public service commission, interstate commerce commission, or department of transportation number of the person or corporation under whose jurisdiction the vehicle or vehicles is or are being operated.

(b) The display of name must be in letters in sharp contrast to the background and in size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is not in motion. The display must be kept and maintained to remain legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, prepared so that it meets the identification and legibility requirements of this section.

(2) This section does not apply to motor vehicles being transported to dealers from point of manufacture or from one dealer to another or being demonstrated to a prospect or delivered to a buyer from a dealer or a manufacturer.

History: (1)En. Sec. 1, Ch. 133, L. 1963; Sec. 53-801, R.C.M. 1947; (2)En. Sec. 2, Ch. 133, L. 1963; Sec. 53-802, R.C.M. 1947; (3)En. Sec. 3, Ch. 133, L. 1963; Sec. 53-803, R.C.M. 1947; R.C.M. 1947, 53-801, 53-802, 53-803; amd. Sec. 1, Ch. 160, L. 1991.

Cross-References

Gross vehicle weight licensing requirements, Title 61, ch. 10, part 2.

69-12-409 through 69-12-414 reserved.

69-12-415. Carrier fitness. A certificate of operating authority may not be issued or remain in force unless the holder of the certificate is fit, willing, and able to perform the authorized service and conforms to the provisions of this chapter and the rules and orders of the commission.

History: En. Sec. 1, Ch. 156, L. 1993.

Cross-References

Certificate defined, 69-12-101.

69-12-416 through 69-12-420 reserved.

69-12-421. Annual fee for motor carriers. (1) Except as provided in subsection (2), in addition to all of the licenses, fees, or taxes imposed upon motor vehicles in this state and in consideration of the use of the public highways of this state, every motor carrier shall, at the time of the issuance of a certificate and annually thereafter, on or between October 1 and the following January 31, pay to the public service commission of Montana a fee set by rule of the commission for every motor vehicle operated by the carrier over or upon the public highways of this state.

(2) (a) A motor carrier engaged in seasonal operations only, where its operations do not extend continuously over a period of not to exceed 6 months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half of the compensation and fees herein provided.

(b) The compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The commission shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

History: En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; R.C.M. 1947, 8-116(a); amd. Sec. 17, Ch. 588, L. 1983.

Cross-References

Operation of municipal busline, 7-14-4403.

Motor vehicle taxes and fees, Title 61, ch. 3, part 5.

69-12-422. Effect of failure to pay compensation, fees, or charges. (1) Upon the failure of any motor carrier to pay such compensation when due, the commission may in its discretion revoke the carrier's certificate or privilege, and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(2) All compensation, fees, or charges imposed and accruing under the provisions of this chapter shall be a lien upon all property of the motor carrier used in its operations under this chapter. Said lien shall attach at the time the compensation, fees, or charges become due and payable and shall have the effect of an execution duly levied on such property of the motor carrier and shall so remain until said compensation, fees, or charges are paid or the property sold for the payment thereof.

History: En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; R.C.M. 1947, 8-116(c), (d).

Cross-References

Operation of municipal busline, 7-14-4403.

Lien of carrier, 30-7-307.

Enforcement of carrier's lien, 30-7-308.

Revocation of certificate, 69-12-327.

Liens, Title 71, ch. 3.

69-12-423. Fees to be charged by commission. (1) The public service commission may, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, applications, and supplements not provided by law to be furnished free of charge.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing such notice as may be required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements of these which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; re-en. Sec. 3847.26, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974; amd. Sec. 5,

Ch. 472, L. 1977; R.C.M. 1947, 8-126(part); amd. Sec. 2, Ch. 500, L. 1979; amd. Sec. 18, Ch. 588, L. 1983.

Cross-References

Fees, 69-1-114.

Part 5
Ratemaking Requirements

69-12-501. Rate schedules to be maintained. (1) Every Class A or B motor carrier holding a certificate must maintain on file with the commission a full and complete schedule of its rates, fares, charges, classifications, and rules of service and any and all tariff provisions relating to such rates, fares, charges, classifications, or rules. Every schedule on file and approved on March 7, 1961, shall remain in full force and effect until changed or modified by the commission or by the carrier with the approval of the commission.

(2) No change, modification, alteration, increase, or decrease in any rate, fare, charge, classification, or rule of service shall be made by any motor carrier without first obtaining the approval of the commission. The commission shall prescribe rules providing for the form and style of all schedules and tariffs and for the procedures to be followed in filing or publishing any changes or modifications of the same.

History: En. Sec. 2, Ch. 201, L. 1961; R.C.M. 1947, 8-104.2.

69-12-502. Prohibition on deviation from rate schedules. It shall be unlawful for any Class A or B motor carrier to charge, demand, receive, or collect any greater or less rate, charge, or fare than that fixed by the commission for the transportation service provided. When maximum or minimum rates have been established for any service provided by any Class C motor carrier, it shall likewise be unlawful for such carrier to charge, demand, receive, or collect any greater compensation or rate than that established for the service by any applicable maximum rate or any less compensation or rate than that established by any applicable minimum rate. It also shall be unlawful for any Class A or B motor carrier or any Class C motor carrier subject to maximum or minimum rates to refund or remit, in any manner or by any device, any portion of the rates, fares, and charges required to be collected under the schedule of the Class A or B carrier on file with the commission or under the maximum or minimum rates established by the commission for the Class C carrier.

History: En. Sec. 3, Ch. 201, L. 1961; R.C.M. 1947, 8-104.3.

69-12-503. Rates to be reasonable and nondiscriminatory. (1) All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and nondiscriminatory. No motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, corporation, locality, or description of traffic, nor shall such motor carrier subject any particular person, company, corporation, locality, or description of traffic to any prejudice or disadvantage in any respect. Nothing herein provided shall prevent the commission from authorizing different rates or schedules of rates for service between the same places or between different points of origin and/or destination within the same places when such different rates are justified by the differing character of service to be rendered by the carrier to a shipper or consignee.

(2) The commission may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier. If the commission shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and nondiscriminatory and it shall order the affected motor carrier or carriers to conform to such modified schedule. Each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the commission.

History: En. Sec. 4, Ch. 201, L. 1961; amd. Sec. 2, Ch. 182, L. 1971; R.C.M. 1947, 8-104.4.

Cross-References

Illegal discrimination, Title 49, ch. 2.

69-12-504. Procedure to revise rate schedule. (1) No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the commission. Such changes or revisions shall be made by filing with the commission the tariff sheet or sheets containing such changes or revisions, plainly stating the changes or revisions to be made, and by submitting at the same time testimony and exhibits supporting the requested change or revision and prepared by the motor carrier. Additional testimony or exhibits may be submitted before or during the hearing provided for in 69-12-505 and may be submitted after the hearing with the approval of the commission. The public shall be provided with such notice of the proposed changes or revisions as the commission shall, by rule, require.

(2) The tariff sheets containing changes or revisions shall be filed with the commission at least 45 days before the proposed effective date. The change or revision shall be effective on the stated effective date unless disallowed or suspended by the commission prior to this date. However, the commission may, for good cause, allow any change or revision to become effective on less than 45 days' notice.

History: En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973; R.C.M. 1947, 8-104.5(part); amd. Sec. 1, Ch. 94, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-12-505. Suspension of proposed rate revision — hearing. (1) Upon its own initiative or upon the complaint of any interested party filed with the commission within 20 days after the date upon which a change or revision of any rate, fare, charge, or classification is filed with the commission, the commission may suspend the operation of such rate, fare, charge, or classification for a period not to exceed 180 days. The order directing such suspension must be issued by the commission not less than 2 business days prior to the proposed effective date. The motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party, mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent, and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff.

(2) (a) If all the protests are withdrawn and the commission finds the proposed increase justified, the commission may vacate the suspension and permit the proposed rates to become effective without a public hearing.

(b) Unless the suspension has been vacated, whenever the suspension of any proposed change or revision in a tariff is ordered by the commission, it shall also order a public hearing to consider the reasonableness of the proposed change or revision. Due notice shall be given for such hearing to all known interested or affected persons, and the same shall be allowed to appear and present evidence. Additional prepared testimony may be presented before or during the hearing and may also be submitted after the hearing with the permission of the commission.

(3) After considering the evidence presented at such hearing, the commission shall issue an order approving, denying, or modifying the proposed change or revision. Unless such hearing is held and such order is issued within 180 days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973; R.C.M. 1947, 8-104.5(part); amd. Sec. 1, Ch. 89, L. 1979.

69-12-506 through 69-12-510 reserved.

69-12-511. Procedure to recover excess charges. (1) Any sum or amount of money paid to any motor carrier in excess of the rates, fares, or charges established for such service by the commission may be recovered from such carrier by the person or shipper who paid the same in any action brought in the district court of the county in which such payment was made. Any such action must be brought within 2 years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and any motor carrier shall be admissible in evidence for the purpose of showing a waiver of the right given by this section.

(2) If upon the trial of such action it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 6, Ch. 201, L. 1961; R.C.M. 1947, 8-104.6.

Cross-References

Costs, Title 25, ch. 10.

Part 6
Carrier Agreements

69-12-601. Carrier agreements. (1) Any carrier, as defined in 69-12-101, which is a party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment) or rules pertaining thereto or procedures for the joint consideration, initiation, or establishment thereof may, under such rules as the commission prescribes, apply to the public service commission for approval of the agreement. The commission shall by order approve any agreement if approval thereof is not prohibited by 69-12-602. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with this subsection.

(2) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission and the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports as may be prescribed by the commission. All such accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representative.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(1), (2).

Cross-References

Records and reports required, 69-12-407.

69-12-602. Limitations on carrier agreements. The commission may not approve under 69-12-601 any agreement:

(1) between a carrier by highway and a carrier by rail unless it finds that such agreement is of the character described in 69-12-601 and is limited to matters relating to the transportation under joint rates or over through routes;

(2) which it finds is an agreement with respect to pooling or division of traffic, service, or earnings;

(3) which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(3) thru (5).

69-12-603. Investigation of operation under agreement. The commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether any agreement previously approved by it under 69-12-601 or any terms or conditions upon which such approval was granted are not in conformity with 69-12-601 and 69-12-602 or whether any such terms or conditions are not necessary for the purpose of conformity with 69-12-601 and 69-12-602. After such investigation, the commission may by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with 69-12-601 and 69-12-602 and may modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with 69-12-601 and 69-12-602 or to the extent it finds its terms and conditions unnecessary to insure such conformity. The effective date of any order terminating or modifying approval or modifying terms and conditions may be postponed for such period as the commission determines is reasonably necessary to avoid undue hardship.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(6).

69-12-604. Hearing required on matters relating to agreements. No order may be entered under 69-12-601 or 69-12-603 except after interested parties have been afforded reasonable opportunity for hearing.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(7).

Cross-References

Hearings to be open, 69-3-104.

69-12-605. Relationship of carrier agreements and antitrust laws. (1) The parties to any agreement approved by the commission under 69-12-601 and other persons are, if the approval of such agreement is not prohibited by 69-12-602, hereby exempted from Montana antitrust laws with respect to such agreement, including Title 30, chapter 14, part 2, or any other statutes prohibiting monopolies, price fixing, or restraint of trade.

(2) Any action of the commission under 69-12-601 through 69-12-603 in approving an agreement, in denying an application for such approval, in terminating or modifying its approval of an agreement, in prescribing terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions shall be construed as having effect solely with reference to the applicability of subsection (1).

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(8), (9).

Cross-References

Price fixing — restraint of trade — preliminary injunction, 27-19-202, 30-14-205.

69-12-606 through 69-12-610 reserved.

69-12-611. Leasing of power equipment. (1) All Class A, Class B, Class C, and Class D motor carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state. The leasing of power units must be in writing.

(2) All leases must contain:

(a) the full names and addresses of negotiating parties;

(b) a complete description of each vehicle involved;

(c) a provision that the sole possession, responsibility, control, and direction of each vehicle resides with the lessee for the entire term of the lease;

(d) a provision that the lessee assumes full responsibility for all regulatory fees;

(e) the amount of compensation to be paid for use of the vehicle while under the lease and the method by which the compensation is determined;

(f) the renewal conditions of the lease, if any; and

(g) the term length of the lease.

(3) A copy of the lease must be maintained in each leased vehicle at all times. Each leased power unit must display in a conspicuous place on both sides of the vehicle the identity and address of the lessor and lessee and the certificate number under which the power unit is operating.

(4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited.

History: **En. 8-103.1 by Sec. 1, Ch. 105, L. 1969; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103.1; amd. Sec. 2, Ch. 352, L. 1979; amd. Sec. 1, Ch. 409, L. 1983; amd. Sec. 1, Ch. 190, L. 1985; amd. Sec. 14, Ch. 481, L. 1991; amd. Sec. 9, Ch. 364, L. 1993.**

69-12-612. Interchange of equipment. (1) Common carriers authorized by the commission may enter into interchange agreements with other authorized common carriers providing for the interchange of equipment. Such agreements must be joint applications made to the commission by the carriers affected. To be approved by the commission, the interchange must take place at a fixed terminal where the carriers' routes intersect. Manifests, waybills, or agreements and all shipping data must be in the possession of the operator of the interchanged equipment. When an interchange has been authorized, such equipment shall be operated only by the certificate holder over whose route such equipment is being operated.

(2) Interchange agreements between Class C contract carriers is prohibited.

History: **En. 8-103.2 by Sec. 1, Ch. 106, L. 1969; R.C.M. 1947, 8-103.2.**

Cross-References

Class C motor carrier certificate, 69-12-313.

CHAPTER 13

PIPELINE CARRIERS

Part 1 — General Provisions

69-13-101. Common carrier pipeline.
69-13-102. Scope of chapter — enforcement.
69-13-103. Right to construct pipelines.
69-13-104. Use of power of eminent domain.
69-13-105. Violations.

Part 2 — Role of Commission

69-13-201. Establishment of rates and operating rules.
69-13-202. Assumption of validity of commission orders.
69-13-203. Investigatory and enforcement authority of commission.

Part 3 — Requirements for Pipeline Carriers

69-13-301. Records and reports.
69-13-302. Connection and interchange facilities.
69-13-303. Prohibition of discrimination in rates or service.

Chapter Cross-References

Annual report to Department of Revenue, 15-23-301.

Financing statement — definitions and requirements, 30-9-409.

Relocation of utilities' facilities, 60-4-402.

Montana Major Facility Siting Act, Title 75, ch. 20.

Part 1
General Provisions

69-13-101. Common carrier pipeline. (1) The following are hereby declared to be common carriers and subject to the provisions of this chapter: every person, firm, corporation, limited partnership, joint-stock association, or association of any kind whatever:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire or engaging in the business of transporting crude petroleum, coal, or the products thereof by pipelines;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, which pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, or the products thereof, which pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within the state to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof, bought of others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

(2) The provisions of this chapter shall not apply to those pipelines which are limited in their use to the wells, stations, plants, and refineries of the owner and which are not a part of the pipeline transportation system of any common carrier, as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipeline transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R.C.M. 1921; re-en. Sec. 3848, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1955; amd. Sec. 1, Ch. 170, L. 1963; R.C.M. 1947, 8-201.

69-13-102. Scope of chapter — enforcement. (1) It is declared that the operation of these pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof, is a business in mode of the conduct of which the public is interested and as such is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, or the products thereof, using in connection with such business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or the products thereof so bought or sold shall not be conducted unless such pipeline so used in connection with such business is a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the commission.

(2) It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: **En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R.C.M. 1921; re-en. Sec. 3849, R.C.M. 1935; amd. Sec. 2, Ch. 190, L. 1955; amd. Sec. 2, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-202.**

Cross-References

Attorney General, Title 2, ch. 15, part 5.

Injunctions, Title 27, ch. 19.

Investigatory and enforcement authority of Public Service Commission, 69-13-203.

69-13-103. Right to construct pipelines. (1) The right to lay, maintain, and operate pipelines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such lines, or along, across, or under any public stream or highway in this state is hereby conferred upon all persons, firms, limited partnerships, joint-stock associations, or corporations coming within any of the definitions of common carrier pipelines as hereinbefore made. This right to run along, across, or over any public road or highway, as provided for, can only be exercised upon condition that the traffic thereon not be interfered with and that such road or highway be promptly restored to its former condition of usefulness. The restoration of the road or highway is subject also to the supervision of the county commissioners of the county in which said highway is situated.

(2) Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipelines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state by filing with the commission an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the right so acquired, it shall be and become a common carrier pipeline, subject to the duties and obligations conferred or imposed in this chapter. In the exercise of the privileges herein conferred, such pipelines shall compensate the county for any damage done to such public road in the laying of pipelines or telegraph or telephone lines along or across the same. Nothing herein shall be construed to grant any pipeline company the right to use any public street or alley in any incorporated city or town except by express permission from the city or governing authority thereof.

History: **En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R.C.M. 1921; re-en. Sec. 3850, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-203(part).**

69-13-104. Use of power of eminent domain. Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this chapter, which shall have filed with the commission its acceptance of the provisions of this chapter, is hereby granted the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or authorization of his, its, or their common carrier pipeline. The manner and method of such condemnation and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads.

History: **En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R.C.M. 1921; re-en. Sec. 3850, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-203(part).**

Cross-References

Eminent domain, Title 70, ch. 30.

69-13-105. Violations. (1) Any common carrier as herein defined who shall violate any provisions of this chapter or who shall fail to perform any duty herein imposed or any valid order of the commission, when not stayed or suspended by order of court, shall be subject to a penalty of not less than $100 or more than $1,000 for each offense. Such penalty shall be recoverable at suit of the attorney general of Montana in the name of the state and for its use.

(2) For the willful violation of any of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents, or employees of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor. Each violation of any of such provisions shall be deemed a separate and distinct offense, and upon conviction thereof the party violating same shall be fined in a sum of not less than $50 or more than $1,000 and may be further punished by confinement in the county jail for not less than 10 days or more than 6 months.

(3) Actual damages may also be recovered by and for the use of any person, corporation, or association of persons against whom there shall have been an unlawful discrimination as herein defined. Such suit shall be brought in the name of and for the use of party aggrieved and may be maintained in any court of proper jurisdiction, having due regard to the ordinary statutes of venue.

History: En. Sec. 9, Ch. 8, Ex. L. 1921; re-en. Sec. 3856, R.C.M. 1921; re-en. Sec. 3856, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-209.

Cross-References

Attorney General, Title 2, ch. 15, part 5.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Part 2

Role of Commission

69-13-201. Establishment of rates and operating rules. (1) The commission shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or the products thereof by such common carrier in this state and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules for the government and control of such common carriers in respect to their pipelines and receiving, transferring, and loading facilities. It shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject.

(2) No order establishing or prescribing rates and rules shall be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected.

(3) In the event any rate shall be filed by any pipeline and complaint against the same or petition to reduce the same shall be filed by any shipper and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipeline shall have the right to reparation or

reimbursement of all excess in transportation charges so paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of such complaint.

History: En. Sec. 4, Ch. 8, Ex. L. 1921; re-en. Sec. 3851, R.C.M. 1921; re-en. Sec. 3851, R.C.M. 1935; amd. Sec. 3, Ch. 190, L. 1955; amd. Sec. 3, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-204.

Cross-References

Hearings to be open, 69-3-104.

69-13-202. Assumption of validity of commission orders. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R.C.M. 1921; re-en. Sec. 3852, R.C.M. 1935; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-205(part).

69-13-203. Investigatory and enforcement authority of commission. The commission shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R.C.M. 1921; re-en. Sec. 3853, R.C.M. 1935; amd. Sec. 5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-206(part).

Cross-References

Investigatory powers of Consumer Counsel, 69-2-203.

Enforcement by Attorney General, 69-13-102.

Part 3
Requirements for Pipeline Carriers

69-13-301. Records and reports. (1) Such common carriers of crude petroleum, coal, or the products thereof shall make and publish their tariffs under such rules as may be prescribed by said commission. The commission shall require them to make reports and may investigate their books and records kept in connection with such business.

(2) The commission shall require of such common carrier pipelines monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, or the products thereof owned by such pipelines, of that held by them in storage for others, and of their unfilled storage capacity. No publicity shall be given by the commission to the reports as to stock of crude petroleum, coal, or the products thereof on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making such reports and of their aggregate storage capacity.

History: En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R.C.M. 1921; re-en. Sec. 3853, R.C.M. 1935; amd. Sec. 5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-206(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-13-302. Connection and interchange facilities. (1) Every common carrier shall exchange crude petroleum tonnage, coal tonnage, or petroleum or coal products tonnage with each like common carrier. The commission shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipelines whenever a necessity therefor exists, subject to such rates and regulations as may be made by the commission. Any such common carrier under like rules shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or the products thereof of patrons at all points on such pipeline.

(2) No carrier shall be required to receive or transport any crude petroleum, coal, or the products thereof except such as may be marketable under rules to be prescribed by the commission, which they are hereby empowered and required to prescribe. The commission is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, or the products thereof tendered for transportation, for deduction therefor, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The recital herein of particular powers on the part of said commission shall not be construed to limit the general powers conferred by this chapter.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R.C.M. 1921; re-en. Sec. 3852, R.C.M. 1935; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-205(part).

69-13-303. Prohibition of discrimination in rates or service. (1) Except as provided in subsection (2), no such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under same or similar circumstances in the transportation of crude petroleum, coal, or the products thereof; nor shall there be any discrimination in the transportation of crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly. In this connection the pipeline shall be considered as a shipper of the crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules which may be prescribed by the commission, every such common carrier shall receive and transport crude petroleum or coal delivered to it for transportation and shall so receive and transport the same and perform its other duties with respect thereto without discrimination.

(2) The provisions of subsection (1) shall not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the commission. When there shall be offered for transportation more crude petroleum, coal, or the products thereof than can be immediately transported, the same shall be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments exceeding

3,000 barrels of petroleum or the products thereof in any one day from any person, firm, corporation, or association of persons.

History: **Ap. p. Sec. 7, Ch. 8, Ex. L. 1921; re-en. Sec. 3854, R.C.M. 1921; re-en. Sec. 3854, R.C.M. 1935; amd. Sec. 6, Ch. 190, L. 1955; amd. Sec. 6, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-207, R.C.M. 1947; Ap. p. Sec. 10, Ch. 8, Ex. L. 1921; re-en. Sec. 3857, R.C.M. 1921; re-en. Sec. 3857, R.C.M. 1935; amd. Sec. 7, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-210, R.C.M. 1947; R.C.M. 1947, 8-207, 8-210.**

Cross-References

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CHAPTER 14

RAILROADS

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Accountability for conduct of corporation, 45-2-312.

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Regulation of carriers, Title 60, ch. 11.

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Part 1
Role of Commission

69-14-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Paralleling" means the situation where the main tracks of parallel lines of railroad or railway are not more than 2,000 feet apart when measured from center to center.

(2) "Railroad" means a corporation, company, or individual owning or operating a railroad in whole or in part in this state. The term also includes express companies, sleeping-car companies, and a rail authority established under Title 7, chapter 14, part 16.

(3) "Transportation" includes instrumentalities of shipment or carriage.

History: (1)En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3835, R.C.M. 1921; re-en. Sec. 3835, R.C.M. 1935; Sec. 72-157, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R.C.M. 1921; re-en. Sec. 3792, R.C.M. 1935; Sec. 72-114, R.C.M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974; Sec. 72-101.1, R.C.M. 1947; R.C.M. 1947, 72-101.1(part), 72-157; amd. Sec. 21, Ch. 43, L. 1979; amd. Sec. 21, Ch. 333, L. 1993.

Cross-References

Railroad defined, 61-1-317, 69-12-101.

Railroad company defined, 69-14-601.

69-14-102. Application. This chapter applies to all persons, firms, or companies, incorporated or otherwise, that do business as common carriers on any of the lines of railroad in this state.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R.C.M. 1921; re-en. Sec. 3792, R.C.M. 1935; Sec. 72-114, R.C.M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974; R.C.M. 1947, 72-101.1(part); amd. Sec. 22, Ch. 43, L. 1979.

69-14-103. Interpretation. This chapter shall not have the effect of releasing or waiving any right of action by the state or any person for any right, penalty, or forfeiture which may arise under any law of this state. All penalties accruing under this part are cumulative to each other, and a suit for or recovery of one is not a bar to the recovery of any other penalty.

History: En. Sec. 35, Ch. 37, L. 1907; Sec. 4398, Rev. C. 1907; re-en. Sec. 3817, R.C.M. 1921; re-en. Sec. 3817, R.C.M. 1935; R.C.M. 1947, 72-140; amd. Sec. 23, Ch. 43, L. 1979.

69-14-104 through 69-14-110 reserved.

69-14-111. General supervision of railroads. The commission shall have the general supervision of all railroads subject to the provisions of this chapter.

History: En. Sec. 16, Ch. 37, L. 1907; Sec. 4378, Rev. C. 1907; re-en. Sec. 3797, R.C.M. 1921; re-en. Sec. 3797, R.C.M. 1935; R.C.M. 1947, 72-119(part); amd. Sec. 1, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 after "all railroads" deleted "express companies, car companies, sleeping-car companies, and freight and freight-line companies and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said commission and within its power and authority"; and made minor changes in style.

Cross-References

Public transportation issues — Department of Transportation to represent state, 60-21-101.

69-14-112. Investigatory authority. (1) The commission shall investigate any alleged neglect or violation of the laws of the state by any railroad doing business in this state. The commission shall examine and inspect or cause to be examined and inspected all books, records, files, and papers referred to in 69-14-111 that pertain to any matter under investigation before the commission, and shall hear and take testimony in the progress of any inquiry or investigation authorized by this chapter.

(2) The commission shall, upon request, investigate and make inquiry into every accident, as defined in 49 CFR 225.5, occurring in the operation of any railroad in this state. The testimony taken must be transcribed and filed in the office of the commission.

History: **En. Secs. 16, 16a, Ch. 37, L. 1907; Secs. 4378, 4379, Rev. C. 1907; re-en. Secs. 3797, 3798, R.C.M. 1921; re-en. Secs. 3797, 3798, R.C.M. 1935; R.C.M. 1947, 72-119(part), 72-120; amd. Sec. 24, Ch. 43, L. 1979; amd. Sec. 2, Ch. 235, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 235 in (1), in first sentence after "by any railroad", deleted "or other company above specified" and substituted "in this state" for "therein or by the officers, agents, or employees thereof" and in second sentence substituted "referred to in 69-14-111 that pertain" for "of the persons and companies specified above, insofar as the same may be pertinent"; in (2), in first sentence after "The commission", deleted "or some members thereof to be deputed by it", after "shall" inserted "upon request", after "accident" inserted "as defined in 49 CFR 225.5", and after "in this state" deleted "resulting in the death, injury to any person of such gravity as to require the attention of a physician or surgeon, or the destruction of property greater in value than $2,000"; and made minor changes in style.

Cross-References

Accident reports, 69-14-252.

69-14-113. Attendance and examination of witnesses. (1) The commission in making any examination or investigation provided for in this chapter may issue subpoenas for the attendance of witnesses by such rules as it may prescribe. Witness fees shall be the same as those provided for witnesses in civil actions before the district court, as provided in 26-2-501. However, no witness furnished with free transportation may receive mileage for the distance he may have traveled on such free transportation. No person may be excused from attending or testifying or producing any books, papers, documents, or any thing or things before any court or magistrate or commissioner or board upon any investigation, proceeding, or trial under the provisions of this chapter or for any violation of any of them upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action, or investigation.

(2) (a) The process issued by the commission shall be under seal and extend to all parts of the state. The commission shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve process of courts of record or by any person appointed by the commission for such purpose.

(b) In the event the process issued by the commission is a subpoena for the attendance of a witness and he fails, neglects, or refuses to obey the same, the commission is hereby authorized to file a petition with any district court in the state, setting up the facts and the necessity of having the witness appear in the trial. The court shall thereupon summarily direct that a subpoena be issued out of the court requiring the attendance of any person as a witness before the court. The commission may thereupon examine such witness before the court, under oath, respecting any inquiry or investigation being made by the commission pursuant to the provisions of this chapter. The court shall likewise, when any petition is filed stating the necessity therefor, order the production by any person or corporation, for examination in the court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by the commission.

History: En. Secs. 10, 18, Ch. 37, L. 1907; Secs. 4372, 4381, Rev. C. 1907; re-en. Secs. 3791, 3800, R.C.M. 1921; re-en. Secs. 3791, 3800, R.C.M. 1935; R.C.M. 1947, 72-113, 72-122; amd. Sec. 25, Ch. 43, L. 1979; amd. Sec. 1, Ch. 87, L. 1979.

Cross-References

Subpoenas, Title 26, ch. 2.

69-14-114. Investigation of existing rules. The commission may, on its own motion or on the complaint by a shipper or other interested person, investigate any rule approved and in effect for transportation of freight by any railroad within the state. The commission shall, within 60 days after the commencement of an investigation on the commission's initiative or after the filing with the commission of a complaint by a shipper or other interested person, proceed to investigate and determine the justness and reasonableness of any rule or order made by the commission.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part); amd. Sec. 3, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 in first sentence, near middle after "investigate any", deleted "rate, classification, or" and near end of second sentence substituted "rule" for "classification, rate, charge, toll, regulation"; and made minor changes in style.

Cross-References

Complaints of unjust rate discrimination, 69-14-321.

69-14-115. Investigation, enforcement, and report concerning railroad safety laws. (1) The commission shall:

(a) make inquiry into the observance by all railroads within this state of the laws of the United States and of Montana intended to safeguard railroad employees;

(b) file a complaint before the proper state or federal officer for an infraction of any of the safety laws referred to in subsection (1)(a); and

(c) prosecute before the proper court or tribunal any person guilty of violation of the safety laws referred to in subsection (1)(a).

(2) The commission shall prepare an annual report specifying the effort it has made to carry out the provisions of this section, the the results of the efforts, and in detail what steps it has taken to prosecute any violations of the safety laws of which it has secured information.

History: (1)En. Sec. 1, Ch. 115, L. 1913; re-en. Sec. 3819, R.C.M. 1921; re-en. Sec. 3819, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-142, R.C.M. 1947; (2)En. Sec. 2, Ch. 115, L. 1913; re-en. Sec. 3820, R.C.M. 1921; re-en. Sec. 3820, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1971; Sec. 72-143, R.C.M. 1947; R.C.M. 1947, 72-142, 72-143; amd. Sec. 26, Ch. 43, L. 1979; amd. Sec. 13, Ch. 125, L. 1983; amd. Sec. 4, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 in (1)(a) substituted "railroad employees" for "the lives of the employees of persons or corporations engaged in operating the same"; in (1)(b), at end, inserted "referred to in subsection (1)(a)"; in (1)(c), at end, substituted "safety laws referred to in subsection (1)(a)" for "penal provisions thereof"; in (2) deleted second sentence that read: "A copy of this annual report shall be mailed to the secretary of the department of transportation"; and made minor changes in style.

Cross-References

Annual reports required by Public Service Commission, 69-14-251.

Regulation of railroad health and safety — penalties, 69-14-562.

69-14-116. General protection of health and safety on railroads — rear-end telemetry systems — exemption for a caboose-equipped train. (1) The commission has full authority:

(a) after notice and hearing, to adopt and enforce rules providing for the installation on and equipment of trains, cars, or engines with safety appliances and providing for sanitation and adequate shelter as it affects the health of all railroad employees; and

(b) to conduct inspections to implement subsection (1)(a).

(2) (a) Except as provided in subsection (4), the commission shall, to the extent permitted by federal law, require a railroad operating trains in Montana to install a rear-end train telemetry system on all trains operating within mountain grade territory as geographically defined and designated by mile posts in the railroad's official timetable and operating rules on file with the commission.

(b) As used in this section, "telemetry system" means a radio transmitter and receiver system with one device placed on the last car of a train and a second device placed in the cab of the controlling locomotive. The second device must be visible to the locomotive engineer and capable of indicating through electronic communication with the device located on the last car of the train the following:

(i) brake pipe pressure at the rear of the train, in increments of 1 pound per square inch;

(ii) rear car movement;

(iii) operation or nonoperation of the rear marker light;

(iv) remaining battery life powering the telemetry system;

(v) interruption of the communication link between the device located on the last car of the train and the device located in the cab of the controlling locomotive; and

(vi) total distance travelled in feet by the locomotive to which the device is attached.

(c) A train operating in the area defined under this subsection (2) may not depart a crew change point or its local point of origin unless the train is equipped with the telemetry system required under the rules established pursuant to this section.

(d) Telemetry systems installed on a train in conformity with rules made under this section must be equipped so that an emergency application of brakes of the train can be initiated by activation of the device placed on the last car at the rear end of the train.

(e) Disciplinary action or other adverse administrative or employment action may not be instituted against a person who reports a violation of this subsection (2) or who acts to enforce the provisions of this subsection (2).

(3) The inspections and rules required under subsections (1) and (2) must be compatible with any federal provisions and may not create an undue burden on interstate commerce.

(4) The commission may not require the installation and use of a telemetry system as described in this section on a train equipped with a caboose that:

(a) meets the requirements of Montana law;

(b) is placed as the last car of the train; and

(c) is occupied by a member of the train crew.

History: En. Sec. 1, Ch. 136, L. 1909; re-en. Sec. 3827, R.C.M. 1921; re-en. Sec. 3827, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1959; amd. Sec. 2, Ch. 124, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-150; amd. Sec. 1, Ch. 487, L. 1991; amd. Sec. 1, Ch. 372, L. 1993; amd. Sec. 5, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 in (1)(b) substituted "conduct inspections to implement" for "inspect the safety appliances, sanitation facilities, and shelters and enforce regulations with regard to the provisions of"; in (3), after "rules", deleted "and regulations"; and made minor changes in style.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Caboose required to be rear train car, 69-14-232.

69-14-117. Provision of adequate accommodations and service. The commission shall have the power and it shall be its duty to compel any and all railroads subject hereto to provide, maintain, and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public and to provide and maintain suitable waiting rooms for passengers and suitable rooms for freight and baggage at all stations.

History: En. Sec. 19, Ch. 37, L. 1907; Sec. 4382, Rev. C. 1907; re-en. Sec. 3801, R.C.M. 1921; re-en. Sec. 3801, R.C.M. 1935; R.C.M. 1947, 72-123.

Cross-References

Duties of railroad, 69-14-201, 69-14-205.

Duty of railroad to furnish shipping and passenger facilities, 69-14-202.

69-14-118. Maintenance of stations where several rail lines come together. (1) Whenever the line of one railroad or railway shall cross, intersect, or parallel (overhead, at grade, or otherwise) the railroad or railway of another company or corporation, the commission shall have power and authority, in addition to all other powers hereafter vested in said commission, after notice and hearing, to order and compel the installation of suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of passengers, baggage, or freight, whenever the same shall be ordered by the commission. Such company or corporation shall, when so ordered by the commission, keep such passenger station warmed, lighted, and opened to the ingress and egress of all passengers a reasonable time before the arrival and after the departure of such trains as accommodate such station, carrying passengers on such railroad or railway. Said railroad or railway companies crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall stop such trains at said station house so located for the transfer of baggage, passengers, and freight, so as to furnish reasonable facilities for that character of a station when so ordered by the commission.

(2) The expense of construction and maintenance of such station house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the commission.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R.C.M. 1921; re-en. Sec. 3834, R.C.M. 1935; amd. Sec. 20. Ch. 315, L. 1974; R.C.M. 1947, 72-156(part).

Cross-References

Authority to erect and maintain buildings, 69-14-532.

69-14-119. Repealed. Sec. 17, Ch. 235, L. 1997.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R.C.M. 1921; re-en. Sec. 3834, R.C.M. 1935; amd. Sec. 20. Ch. 315, L. 1974; R.C.M. 1947, 72-156(part).

69-14-120. Violations of provisions relating to rails coming together. A railroad or railway company and its officers or agents who refuse or fail to comply with the provisions of 69-14-118 or any order or rule made by the commission under 69-14-118 is subject to a fine of not less than $25 or more than $50. Each day of refusal or failure is considered a separate offense and is subject to the penalty in this section. The fine must be recovered in a civil action filed upon complaint of the commission in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-163(part); amd. Sec. 6, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 near middle of first sentence, after "69-14-118", deleted "or 69-14-119" and after "by the commission" inserted "under 69-14-118"; and made minor changes in style.

69-14-121 through 69-14-130 reserved.

69-14-131. Enforcement duties of commission. The commission shall see that the provisions of this chapter and all laws of this state concerning railroads are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. The commission shall report all such violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws and request him to institute the proper proceedings. All suits between the state and any railroad shall have precedence in all courts over all civil causes, criminal business and original proceedings in the supreme court excepted.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R.C.M. 1921; re-en. Sec. 3816, R.C.M. 1935; R.C.M. 1947, 72-139(part); amd. Sec. 27, Ch. 43, L. 1979.

69-14-132. Legal assistance for commission. The attorney general is the attorney of the commission, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by the commission under this chapter in his own county. However, the commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this chapter. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute and appear and defend any action or proceeding arising under this chapter. All suits and proceedings filed in any court of this state under this chapter shall have precedence over all other business in the court except criminal business and original proceedings in the supreme court.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R.C.M. 1921; re-en. Sec. 3802, R.C.M. 1935; amd. Sec. 13, Ch. 315, L. 1974; R.C.M. 1947, 72-124; amd. Sec. 28, Ch. 43, L. 1979.

Cross-References

General duties of Attorney General, 2-15-501.

Supreme Court original jurisdiction, 3-2-202.

Duty of County Attorneys in state matters, 7-4-2716.

69-14-133. Collection and disposition of penalties and forfeitures. Unless otherwise provided in this chapter, all penalties and forfeitures under the provisions of this chapter must be collected by the commission, paid to the state, and credited to the general fund. If the commission fails or refuses to institute appropriate action for the recovery of any penalty or forfeiture provided for in this chapter for 60 days after notice of the cause of complaint by an aggrieved person or shipper, the person or shipper may institute and prosecute an action in the name of the state against the railroad, in the same manner as the commission.

History: En. Sec. 30, Ch. 37, L. 1907; Sec. 4393, Rev. C. 1907; re-en. Sec. 3812, R.C.M. 1921; re-en. Sec. 3812, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-135; amd. Sec. 29, Ch. 43, L. 1979; amd. Sec. 7, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 near beginning of first sentence inserted "in this chapter" and near end, after "paid to the state", deleted "treasurer"; and made minor changes in style.

Cross-References

Actions to recover excess charges, 69-14-322.

69-14-134. Court enforcement of commission actions. (1) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rulings, orders, and regulations made or established by the commission under the provisions of this chapter. The proceeding therefor shall be by equitable action in the name of the state and shall be instituted by the attorney general or county attorney, whenever advised by the commission that any railroad, railway, or common carrier is violating or refusing to comply with any such rule, order, rate, classification, or regulation made by the commission and applicable to such railroad, railway, or common carrier. Such proceedings shall have precedence over all other business in such courts except criminal business.

(2) In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to it. If, in such action, it is the decision of the court that the rule, regulation, order, rate, or classification is not unreasonable or unjust and that in refusing compliance therewith the railroad, railway, or common carrier is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant and its officers, agents, servants, and employees and may grant such other relief as is just and proper. Any violation of such decree renders the defendant and any officer, agent, servant, or employee of the defendant who is in any manner instrumental in such violation guilty of contempt, punishable by a fine not exceeding $1,000 for each offense or by imprisonment of the person guilty of contempt until he sufficiently purges himself therefrom. Such decree remains in effect until the rule, regulation, order, rate, or classification shall be modified or vacated by the commission. Nothing contained herein shall be construed to deprive either party to such proceedings of the right to trial by jury as provided

by the seventh amendment to the constitution of the United States or as provided by the constitution of this state.

(3) An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court except original proceedings in the supreme court.

History: En. Sec. 24, Ch. 37, L. 1907; Sec. 4387, Rev. C. 1907; re-en. Sec. 3806, R.C.M. 1921; re-en. Sec. 3806, R.C.M. 1935; R.C.M. 1947, 72-128; amd. Sec. 30, Ch. 43, L. 1979.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

General duties of Attorney General, 2-15-501.

Contempts, Title 3, ch. 1, part 5.

Supreme Court original jurisdiction, 3-2-202.

Duty of County Attorneys in state matters, 7-4-2716.

Injunctions, Title 27, ch. 19.

Lawsuit to determine reasonableness of Public Service Commission actions, 69-14-402.

69-14-135. General right to supreme court review. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this chapter. Such appeals have precedence over all other business except criminal business and original proceedings in such court and shall be heard and determined as are appeals in civil actions.

History: Ap. p. Sec. 25, Ch. 37, L. 1907; Sec. 4388, Rev. C. 1907; re-en. Sec. 3807, R.C.M. 1921; re-en. Sec. 3807, R.C.M. 1935; Sec. 72-129, R.C.M. 1947; Ap. p. Sec. 6, Ch. 136, L. 1909; re-en. Sec. 3831, R.C.M. 1921; re-en. Sec. 3831, R.C.M. 1935; Sec. 72-154, R.C.M. 1947; Ap. p. Sec. 5, Ch. 105, L. 1913; re-en. Sec. 3839, R.C.M. 1921; re-en. Sec. 3839, R.C.M. 1935; Sec. 72-161, R.C.M. 1947; R.C.M. 1947, 72-129, 72-154, 72-161; amd. Sec. 31, Ch. 43, L. 1979.

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Court review of Public Service Commission actions, 69-14-401.

69-14-136. Repealed. Sec. 55, Ch. 43, L. 1979.

History: En. Sec. 6, Ch. 105, L. 1913; re-en. Sec. 3840, R.C.M. 1921; re-en. Sec. 3840, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-162.

69-14-137. Violations. If any railroad or other common carrier willfully violates any provision of this chapter, does any other act herein prohibited, or refuses to perform any lawful orders emanating from the commission relating to rates and charges or any other duty enjoined upon it for which a penalty has not been provided, then for every such act or violation it shall pay to the state a penalty of not more than $500.

History: En. Sec. 29, Ch. 37, L. 1907; Sec. 4392, Rev. C. 1907; re-en. Sec. 3811, R.C.M. 1921; re-en. Sec. 3811, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-134; amd. Sec. 32, Ch. 43, L. 1979.

Part 2

Requirements for Railroads

Part Cross-References

Railroad responsibility for costs of special improvement district around tracks, 7-12-2156.

City and town regulation of railroads, Title 7, ch. 14, part 43.

Certain political contributions by railroads prohibited, 13-35-227.

Criminal offense to carry firearms on train, 45-8-339.

Criminal offense to carry dangerous drugs on train, 45-9-127.

Railroad crossings — stops required, 61-8-348, 61-8-349.

Moving heavy equipment at grade crossings, 61-8-350.

Expense of cleaning and disinfecting carriers' facilities, 81-2-110.

69-14-201. General duties of railroad corporation. Every railroad corporation must:

(1) start and run its cars for the transportation of persons and property at such regular times as it shall fix by public notice;

(2) furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or are offered for transportation at the place of starting, at the junction of other railroads, and at sidings or stopping places established for receiving and discharging way passengers and freight; and

(3) take, transport, and discharge such passengers and property at, from, and to such places on the due payment of tolls, freight, or fare therefor.

History: En. Sec. 971, Civ. C. 1895; re-en. Sec. 4324, Rev. C. 1907; re-en. Sec. 6558, R.C.M. 1921; Cal. Civ. C. Sec. 481; re-en. Sec. 6558, R.C.M. 1935; R.C.M. 1947, 72-602.

Cross-References

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

Power and duty of Public Service Commission to compel adequate accommodations and service, 69-14-117.

69-14-202. Duty to furnish shipping and passenger facilities. (1) Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility. In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

History: En. Sec. 1, Ch. 26, L. 1905; re-en. Sec. 4343, Rev. C. 1907; re-en. Sec. 6582, R.C.M. 1921; re-en. Sec. 6582, R.C.M. 1935; amd. Sec. 1, Ch. 266, L. 1969; amd. Sec. 21, Ch. 315, L. 1974; R.C.M., 72-627; amd. Sec. 33, Ch. 43, L. 1979; amd. Sec. 1, Ch. 495, L. 1987; amd. Sec. 1, Ch. 645, L. 1989.

Cross-References

Provision of conveniences and services required, 69-14-532, 69-14-562.

69-14-203. Posting of information concerning train schedules. (1) Every company or corporation managing, operating, or leasing any railroad in this state that is engaged in the transportation of passengers shall place or cause to be placed a bulletin board in a conspicuous place in and about each and every station or depot where an agent, telephone, or telegraph operator is kept. Such railway company or corporation shall, for the information of the traveling public, at least 3 hours before the advertised scheduled time of the arrival of each passenger train stopping upon such route at such station, cause to be posted upon such bulletin board the number of the train, the time such train is due, and the fact whether such train is on scheduled time or not and, if late, how much, and shall indicate at the end of 2 hours thereafter any gain or loss of more than 15 minutes made by such train and thereafter, every 30 minutes any gain or loss of more than 15 minutes made by such train, on such bulletin board at such station, showing at each time indicated how much said train is running behind its scheduled time. Nothing in this section shall be so construed as to compel such railway company or corporation leasing, operating, or managing any railroad in this state to post the number, scheduled time, and lateness of such trains as arriving or departing from such stations aforesaid while there is no such agent, telegraph, or telephone operator or any other person on duty, but immediately after such agent, telegraph, or telephone operator in charge of such station comes on duty, such railway company or corporation shall cause to be indicated on said bulletin board the number of any trains then due or overdue or scheduled to be due within 3 hours, the time any train or trains are due, and how much the trains are running behind their scheduled time. Any such passenger train not more than 10 minutes late shall be deemed to be on time as to the operation of this section. When such station is connected by telephone with the central exchange in any town or city, such railway company or corporation, upon request of such central exchange, shall promptly notify such central exchange as to the time of arrival of such passenger train, giving the same information as is posted on said bulletin board and at the time of said posting.

(2) Every railway company or corporation managing, operating, or leasing any railroad in this state that shall willfully or negligently violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $200 for each offense; such action to be prosecuted by the county attorney of the county in which the violation occurs, in the name of the state of Montana.

History: (1)En. Sec. 1, Ch. 67, L. 1917; re-en. Sec. 6584, R.C.M. 1921; re-en. Sec. 6584, R.C.M. 1935; Sec. 72-629, R.C.M. 1947; (2)En. Sec. 2, Ch. 67, L. 1917; re-en. Sec. 6585, R.C.M. 1921; re-en. Sec. 6585, R.C.M. 1935; Sec. 72-630, R.C.M. 1947; R.C.M. 1947, 72-629, 72-630.

Cross-References

Time schedules to be followed, 69-11-103.

Establishment and notice of schedule for passenger carriers, 69-11-202.

69-14-204. Effect of refusal to accept passengers or property. In case of refusal by such corporation or its agents so to take and transport any passengers or property or to deliver the same at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

History: En. Sec. 972, Civ. C. 1895; re-en. Sec. 4325, Rev. C. 1907; re-en. Sec. 6559, R.C.M. 1921; Cal. Civ. C. Sec. 482; re-en. Sec. 6559, R.C.M. 1935; R.C.M. 1947, 72-603.

Cross-References

Costs, Title 25, ch. 10.

Damages, Title 27, ch. 1, parts 2 and 3.

Power and duty of Public Service Commission to compel adequate accommodations and service, 69-14-117.

69-14-205. Accommodations for and care to be taken of passengers. (1) Every railroad corporation must furnish on the inside of its passenger cars sufficient room and accommodations for all passengers to whom tickets are sold for any one trip and for all persons presenting tickets entitling them to travel thereon.

(2) When fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

History: En. Sec. 973, Civ. C. 1895; re-en. Sec. 4326, Rev. C. 1907; re-en. Sec. 6560, R.C.M. 1921; Cal. Civ. C. Sec. 483; re-en. Sec. 6560, R.C.M. 1935; R.C.M. 1947, 72-604.

Cross-References

Transport of passengers, 69-11-203.

Provision of conveniences and services required, 69-14-532, 69-14-562.

69-14-206. Rules for fare and conduct of passengers. (1) Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules regarding fare and conduct of its passengers.

(2) In case any passenger is injured on or from the platform of a car or on any baggage, wood, gravel, or freight car, in violation of such printed regulations or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries unless the corporation failed to comply with the provisions of 69-14-205.

History: En. Sec. 974, Civ. C. 1895; re-en. Sec. 4327, Rev. C. 1907; re-en. Sec. 6561, R.C.M. 1921; Cal. Civ. C. Sec. 484; re-en. Sec. 6561, R.C.M. 1935; R.C.M. 1947, 72-605.

Cross-References

Damages, Title 27, ch. 1, parts 2 and 3.

Liability, Title 27, ch. 1, part 7.

Requirements for carriers of persons for reward, 69-11-201.

69-14-207. Expulsion of passengers refusing to pay fare. If any passenger refuses to pay his fare or to exhibit or surrender his ticket when reasonably requested to do so, the conductor and employees of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or near any dwelling house, on stopping the train.

History: En. Sec. 975, Civ. C. 1895; re-en. Sec. 4328, Rev. C. 1907; re-en. Sec. 6562, R.C.M. 1921; Cal. Civ. C. Sec. 487; re-en. Sec. 6562, R.C.M. 1935; R.C.M. 1947, 72-606.

Cross-References

Payment of fare by passengers, 69-11-205.

Ejection of passengers, 69-11-209.

69-14-208. Officers and employees of corporation to wear badges. (1) Every conductor, baggage master, engineer, brakeman, or other employee of any railroad corporation employed on a passenger train or at stations for passengers must wear, upon his hat or cap or in some conspicuous place on the breast of his coat, a badge indicating his office or station and the initial letters of the name of the corporation by which he is employed.

(2) No collector or conductor without such badge is authorized to demand or to receive from any passenger any fare, toll, or ticket or exercise any of the powers of his office or station, and no other officer or employee without such badge has any authority to meddle or interfere with any passenger or property.

History: En. Sec. 976, Civ. C. 1895; re-en. Sec. 4329, Rev. C. 1907; re-en. Sec. 6563, R.C.M. 1921; Cal. Civ. C. Sec. 488; re-en. Sec. 6563, R.C.M. 1935; R.C.M. 1947, 72-607.

69-14-209. Issuance of passenger tickets. (1) Every railroad corporation must provide and, on being tendered the regular rates of fare, furnish a ticket to every person desiring a passage on its passenger cars, which entitles the purchaser to a ride and to the accommodations provided on its cars from the depot or station where the same is purchased to any other depot or station on the line of its road. Every such ticket entitles the holder thereof to ride on its passenger cars to the station or depot of destination or any intermediate station and from any intermediate station to the depot of destination designated in the ticket at any time within 6 months thereafter.

(2) Any corporation failing to provide and furnish tickets or refusing the passage which the same calls for when sold must pay to the person refused the sum of $200.

History: En. Sec. 977, Civ. C. 1895; re-en. Sec. 4330, Rev. C. 1907; re-en. Sec. 6564, R.C.M. 1921; Cal. Civ. C. Sec. 490; re-en. Sec. 6564, R.C.M. 1935; R.C.M. 1947, 72-608; amd. Sec. 34, Ch. 43, L. 1979.

69-14-210. Baggage checks. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation and a duplicate thereof given to the passenger or person delivering the same in his behalf. If such check is refused on demand, the railroad corporation must pay to such passenger the sum of $20, to be recovered in an action for damages, and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train. On producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation.

History: En. Sec. 970, Civ. C. 1895; re-en. Sec. 4323, Rev. C. 1907; re-en. Sec. 6557, R.C.M. 1921; Cal. Civ. C. Sec. 479; re-en. Sec. 6557, R.C.M. 1935; R.C.M. 1947, 72-601.

Cross-References

Carriage of baggage by carriers of persons, 69-11-204.

Bailments, Title 70, ch. 6.

69-14-211. Certificate of authority for ticket agents. (1) It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers to provide each agent who may be authorized to sell, within the state, tickets or other evidence entitling the holder thereof to travel upon their railroad or steamboat with a certificate setting forth the authority of such agent to make such sales. The certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat and shall, for the information of travelers, be kept posted in a conspicuous place in the office of such agent.

(2) It shall be the duty of every agent residing or acting within this state who shall be authorized to sell therein tickets or other evidence of the holder's title to travel upon any railroad or steamboat to exhibit to any person desiring to purchase a ticket or to any officer of the law who may request him to do so such certificate of his authority thus to sell.

History: (1)En. Sec. 1, p. 150, L. 1893; re-en. Sec. 978, Civ. C. 1895; re-en. Sec. 4331, Rev. C. 1907; re-en. Sec. 6565, R.C.M. 1921; re-en. Sec. 6565, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1943; amd. Sec. 1, Ch. 60, L. 1949; Sec. 72-609, R.C.M. 1947; (2)En. Sec. 4, p. 151, L. 1893; re-en. Sec. 981, Civ. C. 1895; re-en. Sec. 4334, Rev. C. 1907; re-en. Sec. 6568, R.C.M. 1921; re-en. Sec. 6568, R.C.M. 1935; amd. Sec. 3, Ch. 60, L. 1949; Sec. 72-612, R.C.M. 1947; R.C.M. 1947, 72-609, 72-612.

69-14-212. Unlawful sale of tickets. (1) It shall be unlawful for any person not a duly authorized ticket agent and in possession of such certificate, so posted as aforesaid, to sell, barter, or transfer within this state for any consideration the whole or any part of any ticket or other evidence of the holder's title or right to travel on said railroad or steamboat, whether such railroad or steamboat be situated, operated, or owned within or without the limits of this state.

(2) Whoever shall violate the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year or both, in the discretion of the court in which such offender shall be convicted.

History: (1)En. Sec. 2, p. 150, L. 1893; re-en. Sec. 979, Civ. C. 1895; re-en. Sec. 4332, Rev. C. 1907; re-en. Sec. 6566, R.C.M. 1921; re-en. Sec. 6566, R.C.M. 1935; amd. Sec. 2, Ch. 60, L. 1949; Sec. 72-610, R.C.M. 1947; (2)En. Sec. 3, p. 151, L. 1893; re-en. Sec. 980, Civ. C. 1895; re-en. Sec. 4333, Rev. C. 1907; re-en. Sec. 6567, R.C.M. 1921; re-en. Sec. 6567, R.C.M. 1935; Sec. 72-611, R.C.M. 1947; R.C.M. 1947, 72-610, 72-611.

69-14-213. Redemption of unused tickets. (1) It shall be the duty of the owners of every railroad or steamboat situate or operated in whole or in part within this state to provide for the redemption, under reasonable precautions, of the whole or of any coupon of any ticket theretofore sold by any agent, authorized as aforesaid, which the purchaser, for any reason other than the expiration of the time limited in said ticket for the use thereof, has not used, at cost in case of the ticket not used and at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the used portion of said ticket was actually used in case of a coupon of a ticket partially used; provided, that such ticket or coupon shall be presented for such redemption to any agent, authorized as aforesaid, before the time therein limited for the use thereof shall have expired. The deposit of such ticket or part of ticket in the post office, addressed to any such agent, with postage thereon duly prepaid, before the expiration of the time limited on such ticket or part of ticket shall be deemed such presentation.

(2) When any ticket-selling agent, so licensed as aforesaid, or any common carrier subject to the provisions of 69-14-211 through 69-14-214, shall sell, barter, or transfer to any person any mileage book or commutation tickets or excursion ticket at any reduced rate authorized by law and when such mileage book, commutation ticket, or excursion ticket shall by the terms thereof be limited in respect of the time in which the same shall be used, then and in that case, such mileage book, commutation ticket, or excursion ticket shall not be redeemed by said common carrier subject to the provisions of 69-14-211 through 69-14-214.

(3) The sale by any person of such ticket or of the unused portion of any such ticket or coupon otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation, and any person guilty of such violation shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year or both, in the discretion of the court in which such offender shall be convicted.

History: En. Sec. 5, p. 152, L. 1893; re-en. Sec. 982, Civ. C. 1895; re-en. Sec. 4335, Rev. C. 1907; re-en. Sec. 6569, R.C.M. 1921; re-en. Sec. 6569, R.C.M. 1935; R.C.M. 1947, 72-613.

69-14-214. Penalty for failure to redeem ticket. Any railroad company or steamboat company which shall by any of its authorized ticket-selling agents within this state unreasonably refuse to redeem any coupon of a ticket or any ticket as required by 69-14-213 shall pay to the state a fine not exceeding $500 for each offense.

History: En. Sec. 6, p. 152, L. 1893; re-en. Sec. 983, Civ. C. 1895; re-en. Sec. 4336, Rev. C. 1907; re-en. Sec. 6570, R.C.M. 1921; re-en. Sec. 6570, R.C.M. 1935; R.C.M. 1947, 72-614.

69-14-215. Issuance of bills of lading by railroad station agents — penalty. (1) All railway companies operating in the state which do not permit bills of lading to be issued by employees other than agents shall be required to have bills of lading issued by the station agent at the nearest station where a station agent is regularly maintained in the direction toward which the shipment is destined. The conductor of the train which receives the shipment at its point of origin shall deliver to the agent at the nearest station at which an agent is maintained through which the shipment moves, immediately upon the arrival of the train carrying the shipment at the agency station, all data necessary for the issuance of a bill of lading for the shipment. The agent shall immediately issue the bill of lading and shall deliver the same to the shipper or his agent or shall, within 24 hours after the receipt of the data from the conductor, for shipment of 20,000 pounds or over, deposit the bill of lading in a United States post office, addressed and registered or certified to the consignor of the shipment or his agent or attorney to his proper post-office address. A bill of lading for shipments of less than 20,000 pounds may be mailed without the use of registered or certified mail.

(2) Any railway company operating in Montana violating any provisions of this section is guilty of a misdemeanor and liable to a fine of not less than $50 or more than $1,000.

History: En. Secs. 1, 2, Ch. 24, L. 1917; re-en. Secs. 6611, 6612, R.C.M. 1921; re-en. Secs. 6611, 6612, R.C.M. 1935; R.C.M. 1947, 72-654, 72-655; amd. Sec. 35, Ch. 43, L. 1979.

69-14-216. Restriction on contractual time limitations for notification of injury to transported livestock. Any provision, stipulation, or condition in any shipping contract, bill of lading, or other agreement made or entered into by or between any common carrier and the owner or shipper of any shipment of livestock providing that written or verbal notice of loss, injury, or damage thereto or of claim therefor shall be made or given to any common carrier, to any agent or officer of any common carrier, or to any other person within any period less than 4 months from the date of the occurrence of any such loss, injury, or damage shall be void and of no effect.

History: En. Sec. 1, Ch. 138, L. 1909; re-en. Sec. 6550, R.C.M. 1921; re-en. Sec. 6550, R.C.M. 1935; R.C.M. 1947, 72-411.

Cross-References

Relationship to Uniform Commercial Code, 30-1-111.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

69-14-217 through 69-14-230 reserved.

69-14-231. Brake equipment. The commission shall have the power and authority to examine and inspect all brakes and brake equipment and after notice and hearing to make and enforce reasonable rules with respect to the examination, inspection, and repair thereof, with a view of determining the proper measure of efficiency of said brakes and brake equipment. Such rules shall be from time to time coextensive with the requirements of and in conformity to the provisions of the acts of congress and rules and regulations of the interstate commerce commission and the department of transportation, as then effective.

History: En. Sec. 2, Ch. 136, L. 1909; re-en. Sec. 3828, R.C.M. 1921; re-en. Sec. 3828, R.C.M. 1935; amd. Sec. 3, Ch. 124, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-151.

69-14-232. Size and equipment of caboose. (1) Occupied cabooses must be at least 24 feet in length, exclusive of platforms, and must be provided with a door in each end and with cupolas or bay windows, platforms, guardrails, grabirons, and steps for the safety of persons in alighting or getting on cabooses. Cabooses must be of metal frame construction and must be sufficiently insulated to eliminate track and other related noise above 85 decibels in any octave in the speech range. Other requirements for cabooses are as follows:

(a) The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and must have at least two four-wheel trucks with standard steel wheels or their equivalent. Draft gears must have a minimum travel of 2 ½ inches and a minimum capacity of 18,000 foot-pounds and must comply with Association of American Railroads Standard M-901 or its equivalent.

(b) Electric lighting of at least 40 foot-candles must be provided for direct illumination of the caboose desk, reading areas, and lavatory facilities.

(c) A spotlight must be provided on the rear of the caboose with sufficient candlepower to illuminate the track for a distance of at least 300 feet to the rear of the caboose during the hours of darkness.

(d) The caboose marker or markers must be either reflectorized or capable of illumination when required.

(e) Only glass of the safety-glass type may be used in partitions, doors, windows, or wind deflectors.

(f) All seats and seat backs must conform to the safety standards designated by the United States department of transportation in its Federal Motor Vehicle Safety Standards, Motor Vehicle Safety Standard No. 201. All edges and protrusions on seats and seat backs must be rounded to prevent injury to employees.

(2) Any person, corporation, or company, operating any railroad or railway in this state, violating any of the provisions of this section and 69-14-233 is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each offense.

History: (1)En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; Sec. 72-622, R.C.M. 1947; (2)En. Sec. 2, Ch. 54, L. 1907; Sec. 4339, Rev. C. 1907; re-en. Sec. 6578, R.C.M. 1921; re-en. Sec. 6578, R.C.M. 1935; Sec. 72-623, R.C.M. 1947; R.C.M. 1947, 72-622(1), 72-623; amd. Sec. 36, Ch. 43, L. 1979; amd. Sec. 1, Ch. 607, L. 1983; amd. Sec. 8, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 deleted former (1) requiring caboose as last car on certain freight trains (see 1997 Session Law for former text); in (1), at beginning, inserted "Occupied"; and made minor changes in style.

Cross-References

General protection of health and safety on railroads, 69-14-116.

Regulation of railroad equipment, 69-14-561.

69-14-233. Failure of caboose equipment or maintenance. (1) Where a failure occurs in required equipment or standards of maintenance after a caboose has commenced to move in service, the failure shall be reported in accordance with subsection (2). The railroad operating that caboose is not in violation of this section and 69-14-232 if the failure of equipment or standards of maintenance is corrected at the first point maintenance supplies are available or in the case of repairs, the first point materials and repair facilities are available and repairs can reasonably be made.

(2) A register for the reporting of failures of the required equipment or standards of maintenance shall be maintained on all cabooses, and provisions for maintaining a record of reported failures for not less than the previous 80-day period shall be established.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(part).

69-14-234. Authorization for exemption from caboose provisions. If, in any particular case, temporary exemption from any requirements of 69-14-232 and 69-14-233 is considered necessary by a carrier concerned, the commission may consider the application of that carrier for temporary exemption and may grant an exemption when the application is accompanied by a full statement of the conditions existing and the reason for the exemption. Any exemption so granted will be limited to the particular case and will be limited to a stated period of time.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(part).

69-14-235. Application of caboose provisions. The provisions of 69-14-232 through 69-14-234 apply to all cabooses except those used exclusively in yard service.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(4).

69-14-236. Headlights and speedometers for locomotives. (1) A person, corporation, or company operating a railroad or railway in this state must equip all locomotive engines used in the transportation of trains over the railroad or railway with:

(a) electric headlights of at least 1,500 candlepower, measured without the aid of a reflector; and

(b) a speedometer that is maintained in good working order at all times and that is located in the lead or controlling unit.

(2) A locomotive used exclusively in yard service is not required to be equipped with a speedometer.

(3) If the speedometer fails en route, it will be deemed as being in good working order until it reaches the next terminal where it will be exchanged with an engine with a working speedometer if one is available.

(4) Any person, corporation, or company, operating any railroad or railway in this state, violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100 or more than $1,000 for each offense.

History: (1) thru (3)En. Sec. 1, Ch. 18, L. 1909; re-en. Sec. 6609, R.C.M. 1921; re-en. Sec. 6609, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1977; Sec. 72-652, R.C.M. 1947; (4)En. Sec. 2, Ch. 18, L. 1909; re-en. Sec. 6610, R.C.M. 1921; re-en. Sec. 6610, R.C.M. 1935; Sec. 72-653, R.C.M. 1947; R.C.M. 1947, 72-652, 72-653.

Cross-References

Regulation of railroad equipment, 69-14-561.

69-14-237. Locomotive engines and electric motors to be marked with identifying numbers. (1) It shall be the duty of every person, corporation, or company operating a railroad or railway in this state to equip all locomotive engines and electric motors used in hauling trains over said railroad or railway with suitable numbers, which numbers shall be displayed at the front and both sides of the headlight on said locomotive engine or electric motor and to be such size as to be easily read from a passing or meeting train.

(2) When a complaint is made to the commission that any person, corporation, or company operating a railroad or railway in this state has failed to comply with the provisions of this section, such commission shall order a hearing and shall serve a notice on such person, corporation, or company at least 15 days before the date set for such hearing. The notice may be served upon any agent of such person, corporation, or company. At the conclusion of such hearing, the commission may make such order in the premises as is deemed necessary and may prescribe the time within which all such locomotive engines shall be equipped with such numbers.

(3) Any person, corporation, or company operating a railroad or railway in this state who violates any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $50 or more than $100 for each offense.

History: (1)En. Sec. 1, Ch. 145, L. 1919; re-en. Sec. 6620, R.C.M. 1921; re-en. Sec. 6620, R.C.M. 1935; Sec. 72-663, R.C.M. 1947; (2)En. Sec. 2, Ch. 145, L. 1919; re-en. Sec. 6621, R.C.M. 1921; re-en. Sec. 6621, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-664, R.C.M. 1947; (3)En. Sec. 3, Ch. 145, L. 1919; re-en. Sec. 6622, R.C.M. 1921; re-en. Sec. 6622, R.C.M. 1935; Sec. 72-665, R.C.M. 1947; R.C.M. 1947, 72-663, 72-664, 72-665.

69-14-238. Equipment for track motor cars. (1) Every person, firm, or corporation operating or controlling any railroad running through or within this state as a common carrier shall:

(a) equip each of its track motor cars with:

(i) a windshield of safety glass and a device for wiping rain, snow, and other moisture therefrom; such device shall be maintained in good order and so constructed as to be controlled by the operator of said track motor car; and

(ii) upon request of the foreman, a canopy or top of such construction as to adequately protect the occupants thereof from the rays of the sun, rain, snow, or other inclement weather;

(b) equip each of its track motor cars used during the period from 30 minutes before sunset to 30 minutes after sunrise with:

(i) an electric headlight of such construction and with sufficient candlepower to be plainly visible at a distance of not less than 300 feet in advance of such track motor car, any track obstruction, landmark, warning sign, or grade crossing; and

(ii) a red rear electric light of sufficient candlepower to be plainly visible at a distance of not less than 300 feet.

(2) Every violation of this section is a misdemeanor.

History: (1)(a)En. Sec. 1, Ch. 109, L. 1957; Sec. 72-668, R.C.M. 1947; (1)(b)En. Sec. 2, Ch. 109, L. 1957; Sec. 72-669, R.C.M. 1947; (2)En. Sec. 3, Ch. 109, L. 1957; Sec. 72-670, R.C.M. 1947; R.C.M. 1947, 72-668, 72-669, 72-670.

Cross-References

General protection of health and safety on railroads, 69-14-116.

Regulation of railroad equipment, 69-14-561.

69-14-239. Operation of trains at grade crossings. (1) Except as provided in subsection (2), no railway company operating trains within this state shall permit any locomotives or cars to cross the tracks of any other railroad, at grade, without coming to a full stop immediately before crossing.

(2) (a) If any railway company or companies using one or more tracks crossing each other or connecting in any way at a common grade shall, by an interlocking plant, signal station, or any other works or fixtures, to be erected by them or either of them, render it safe to pass over said crossings without stopping and if such plant, works, or fixtures shall have been first approved by the county commissioners of the county wherein such works are to be constructed and used and the plans of such works and fixtures for such crossing, designating the place of such crossing, shall have been filed with such commissioners, then and in that case the foregoing provisions of this section requiring the stopping of trains at such crossing shall not apply to said companies or either of them.

(b) If said county commissioners shall disapprove any such plans so filed with them or fail to approve the same within 20 days after the filing thereof with them, such railway companies or either of them may apply in the county where such crossing is situated to the district court in and for said county or to a judge thereof in vacation, by petition in writing setting forth the object of such application. Said court or judge shall thereupon appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place, together with a copy of said petition, shall be served upon said county commissioners at least 10 days before the day appointed for said hearing. Said district court or a judge thereof in vacation shall have full power upon the hearing of said petition to grant the prayer thereof or to make such other order thereon as may be proper in the premises, and the foregoing provisions of this section requiring the stoppage of trains at crossings shall not apply to said railway companies or either of them if said district court shall by its order upon said petition grant the prayer thereof or otherwise and to any extent approve the construction and use of the interlocking plant or other structures therein referred to.

History: En. Sec. 1, Ch. 8, L. 1903; re-en. Sec. 4359, Rev. C. 1907; re-en. Sec. 6596, R.C.M. 1921; re-en. Sec. 6596, R.C.M. 1935; R.C.M. 1947, 72-641.

Cross-References

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

Certain vehicles to stop at all railroad grade crossings, 61-8-349.

Railroad highway crossing, Title 69, ch. 14, part 6.

69-14-240. Duty to construct drains and ditches. (1) It shall be the duty of every corporation, company, or person owning or operating any railroad or branch thereof in this state and of any corporation, company, or person constructing any railroad in this state, within 3 months after the completion of the same through any county in this state, to cause to be constructed and maintained suitable ditches and drains along each side of the roadbed of such road or to construct culverts or openings through such roadbed to connect with ditches, drains, or watercourses, so as to afford sufficient outlet to drain and carry off the water along such railroad whenever the draining of such water has been obstructed or rendered necessary by the construction of such railroad. None of the drains or ditches herein referred to shall be required to be constructed by any of the persons or corporations herein named or described except when required to remove and drain off water accumulated upon property adjacent to or upon the right-of-way whose natural channel or outlet has been destroyed or impaired by the embankment of such railway so constructed as aforesaid.

(2) In case such corporation, company, or person shall fail or neglect to construct and maintain such ditches or drains as are herein required within the time limited in this section, the board of county commissioners of any county through which such railroad has been or may be constructed and located and in which the draining herein required has been neglected is hereby authorized and required, upon the petition of 20 landowners of such county along the line of and contiguous to such railroad, to cause such ditches or drains, as are herein required, to be constructed and maintained. Said board of county commissioners may maintain an action against such corporation, company, or person so failing to comply with the provisions of this section, in any court of competent jurisdiction and in the name of such county, and shall be entitled to recover all costs and expenses incurred in the construction and maintenance of said drains or ditches.

History: En. Sec. 2, Ch. 101, L. 1903; re-en. Sec. 4362, Rev. C. 1907; re-en. Sec. 6599, R.C.M. 1921; re-en. Sec. 6599, R.C.M. 1935; R.C.M. 1947, 72-644.

Cross-References

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

69-14-241 through 69-14-250 reserved.

69-14-251. Annual reports. (1) The commission shall require verified annual reports from each and every railroad owning, operating, or having any line of railroad in this state and shall prescribe the manner in which such reports shall be made and may require specific answers to all questions upon which the commission may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the commission. The commission, at such other times as it may deem necessary, may require such other information, statements, or reports as may be deemed necessary and may fix the time for filing of the same.

(2) Any railroad failing or refusing to make or file such annual report or failing or refusing to furnish such additional information, statements, or reports, as may be demanded by the commission, shall forfeit the sum of $500 for each day that such refusal or neglect shall be continued.

History: **En. Sec. 32, Ch. 37, L. 1907; Sec. 4395, Rev. C. 1907; re-en. Sec. 3814, R.C.M. 1921; re-en. Sec. 3814, R.C.M. 1935; R.C.M. 1947, 72-137.**

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Authority for report requirement, 69-14-115.

69-14-252. Accident reports. Every railroad company operating any line of railroad within this state shall promptly upon the occurrence of any accident mentioned in 69-14-112(2) report the same to the commission. In the report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed.

History: **En. Sec. 17, Ch. 37, L. 1907; Sec. 4380, Rev. C. 1907; re-en. Sec. 3799, R.C.M. 1921; re-en. Sec. 3799, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-121; amd. Sec. 37, Ch. 43, L. 1979.**

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Part 3
Ratemaking Procedures

69-14-301 through 69-14-312. Repealed. Sec. 17, Ch. 235, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

69-14-301. (1) thru (3)En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; Sec. 72-116, R.C.M. 1947; (4)En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; Sec. 72-118, R.C.M. 1947; R.C.M. 1947, 72-116(1), 72-118(part); amd. Sec. 38, Ch. 43, L. 1979.

69-14-302. En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; R.C.M. 1947, 72-116(part).

69-14-303. (1), (2)En. Secs. 22, 23, Ch. 37, L. 1907; Secs. 4385, 4386, Rev. C. 1907; re-en. Secs. 3804, 3805, R.C.M. 1921; re-en. Secs. 3804, 3805, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Secs. 58, 59, Ch. 359, L. 1977; Secs. 72-126, 72-127, R.C.M. 1947; (3)En. 72-231 by Sec. 1, Ch. 473, L. 1977; Sec. 72-231, R.C.M. 1947; R.C.M. 1947, 72-126, 72-127, 72-231; amd. Sec. 39, Ch. 43, L. 1979.

69-14-304. (1)En. Sec. 1, p. 164, L. 1901; re-en. Sec. 4353, Rev. C. 1907; re-en. Sec. 6590, R.C.M. 1921; re-en. Sec. 6590, R.C.M. 1935; Sec. 72-635, R.C.M. 1947; (2)En. Sec. 2, p. 165, L. 1901; re-en. Sec. 4354, Rev. C. 1907; re-en. Sec. 6591, R.C.M. 1921; re-en. Sec. 6591, R.C.M. 1935; Sec. 72-636, R.C.M. 1947; R.C.M. 1947, 72-635, 72-636.

69-14-305. En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-306. En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-307. En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-308. En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-309. En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part); amd. Sec. 40, Ch. 43, L. 1979.

69-14-310. En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-311. En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part); amd. Sec. 1, Ch. 430, L. 1979.

69-14-312. En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L.

1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part).

69-14-313. Fees to be charged by commission. The commission shall require and receive a fee from the affected railroad to pay the cost of publishing notice as required by this chapter.

History: En. Sec. 3, Ch. 500, L. 1979.

69-14-314 through 69-14-320 reserved.

69-14-321. Complaints of unjust rate discrimination. (1) The commission may entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state or any point therein in the way of rates for the transportation of freight or passengers from points without the state to points within the state and vice versa.

(2) In proper cases, where it appears that the United States interstate commerce commission law has been violated, the commission shall complain to the interstate commerce commission of the United States and aid such commission in any investigation it may make concerning violations of the United States law by furnishing evidence and in any other manner which may seem best suited to enforce both the United States and state law and to protect the interests of the people.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; R.C.M. 1947, 72-116(part).

Cross-References

Investigation of existing rates, classifications, and rules, 69-14-114.

69-14-322. Actions to recover excess charges. (1) Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the commission for such service may be recovered from such railroad by the person or shipper in any action instituted and maintained in the district court of the county in which such payment was made. No contract or agreement, written or otherwise, between such person or shipper and the railroad shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be or be held to be a waiver on the part of such person or shipper of the right to sue and recover for such excess or overcharge as provided for in this section. If upon the trial of such action it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

(2) An action under this section must be brought within 3 years from the date the cause of action accrues.

History: En. Sec. 26, Ch. 37, L. 1907; Sec. 4389, Rev. C. 1907; re-en. Sec. 3808, R.C.M. 1921; amd. Sec. 1, Ch. 155, L. 1925; re-en. Sec. 3808, R.C.M. 1935; R.C.M. 1947, 72-130; amd. Sec. 41, Ch. 43, L. 1979.

Cross-References

Willfully defined, 1-1-204.

Costs, Title 25, ch. 10.

Lawsuit to determine reasonableness of Public Service Commission actions, 69-14-402.

Fines for exorbitant rates, 69-14-560.

Part 4
Review of Commission Action

69-14-401. Court review of commission actions. An action to review the determination of the commission adopting any rule or order or the refusal of the commission to adopt a rule or order must be commenced in the district court of the county having jurisdiction.

History: En. Sec. 21, Ch. 37, L. 1907; Sec. 4384, Rev. C. 1907; re-en. Sec. 3803, R.C.M. 1921; re-en. Sec. 3803, R.C.M. 1935; R.C.M. 1947, 72-125; amd. Sec. 9, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 near beginning substituted "rule" for "classification, rate, toll, charge, regulation", near middle substituted "adopt a rule" for "make, fix, or establish any classification, rate, toll, charge, regulation", and after "county having jurisdiction" deleted former provisions governing initiation of legal action challenging Commission action (see 1997 Session Law for former text); deleted (2) requiring adoption of new rate by Commission if court finds existing rate unjust (see 1997 Session Law for former text); and made minor changes in style.

Cross-References

Verification of pleadings, 25-4-203.

Applicability in general, Rule 81, M.R.Civ.P. (see Title 25, ch. 20).

General right to Supreme Court review, 69-14-135.

69-14-402. Lawsuit to determine reasonableness of commission actions. (1) Any railroad, shipper, or other interested person may bring an action in the district court of the county where the principal office or place of business of such railroad, shipper, or other interested person is situated or in any county where any classification, rate, toll, charge, rule, or order of the commission is applicable, against the commission as defendant, to determine whether or not any such classification, rate, toll, charge, rule, or order made, fixed, or established by the commission under the provisions of this chapter is just and reasonable.

(2) Until the final decision in any such action, the classification, rate, toll, charge, rule, or order of the commission affecting rates or charges shall be considered to be final and conclusive except as herein otherwise provided. In any action, hearing, or proceeding in any court, the classifications, rates, tolls, charges, rules, and orders made, fixed, and established by the commission shall prima facie be considered just, reasonable, and proper.

(3) All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as may seem just and equitable to the court.

History: (1), (2)En. Sec. 28, Ch. 37, L. 1907; Sec. 4391, Rev. C. 1907; re-en. Sec. 3810, R.C.M. 1921; re-en. Sec. 3810, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-133, R.C.M. 1947; (3)En. Sec. 27, Ch. 37, L. 1907; Sec. 4390, Rev. C. 1907; re-en. Sec. 3809, R.C.M. 1921; re-en. Sec. 3809, R.C.M. 1935; Sec. 72-132, R.C.M. 1947; R.C.M. 1947, 72-132, 72-133; amd. Sec. 42, Ch. 43, L. 1979.

Cross-References

Court enforcement of Public Service Commission actions, 69-14-134.

Actions to recover excess charges, 69-14-322.

69-14-403. Repealed. Sec. 55, Ch. 43, L. 1979.

History: En. Sec. 7, Ch. 136, L. 1909; re-en. Sec. 3832, R.C.M. 1921; re-en. Sec. 3832, R.C.M. 1935; R.C.M. 1947, 72-155.

Part 5
Railroad Corporations

Part Cross-References

Railroad responsibility for costs of special improvement district around tracks, 7-12-2156.

Assessment of railroads, 15-8-301, 15-8-407, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Filing security interest when collateral is railroad equipment, 30-9-403.

Perfection of security interest in rolling stock, 30-9-409.

Securities issued by railroad exempt from securities registration, 30-10-104.

Service of process provisions for insurance not applicable to railroads engaged in interstate commerce, 33-1-614.

Business corporations, Title 35, ch. 1.

Railroad corporation special peace officers, Title 44, ch. 4, part 9.

Relocation of utilities' facilities, 60-4-402.

Railroad rehabilitation revenue bonds, Title 60, ch. 11, part 11.

Rolling stock revenue bonds, Title 60, ch. 11, part 12.

Penalty for interference with official railroad signs or signals, 61-8-713.

Eminent domain, Title 70, ch. 30.

Restriction on building railroad on public watershed, 75-6-112.

Contracts for use of railroads, 76-5-1109.

Easements for public uses, 77-2-101.

Assessment of railroads in drainage districts, 85-8-341, 85-8-342.

69-14-501. Organization of railroad corporation. (1) The persons named in the articles of incorporation or a majority of them shall be authorized to order books to be opened for receiving subscriptions to the capital stock of the railroad corporation, at such times and at such places as they may deem expedient, after having given at least 30 days' notice in a newspaper of general circulation in this state of the time and place of opening books.

(2) As soon as 5% of the capital stock is subscribed, they may give like notice for the stockholders to meet at such time and place within the state as they may designate for the purpose of electing five or more directors who shall continue in office until the time fixed for the annual election, which time shall be within 6 months from the date when such directors were elected, and until their successors are elected and qualified. At the time and place appointed, directors shall be elected in the manner provided in 35-1-419 through 35-1-422. The candidates for director receiving the highest number of votes shall be declared elected. The persons named in such articles or such of them as may be present shall be inspectors of such election and shall certify what persons are elected directors and specify the time and place for holding their first meeting.

History: En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; R.C.M. 1947, 72-204(part); amd. Sec. 43, Ch. 43, L. 1979; amd. Sec. 213, Ch. 368, L. 1991.

69-14-502. Organization of board of directors. (1) A majority of said directors shall form a board and be competent to fill vacancies therein, make bylaws, and transact all business of the corporation. The directors elected at any election shall, so soon thereafter as may be convenient, choose one of their number to be president and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge his duties. They may from time to time make such dividends of the actual net profits of said corporation as they may think proper and shall hold their offices until their successors are elected and qualified.

(2) A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine or as the bylaws of the corporation may require.

History: En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; R.C.M. 1947, 72-204(part).

69-14-503. Capital stock of railroad corporations. The capital stock of such corporation shall consist of such sum as may be named in the articles of incorporation, in shares of $100 each. Such shares shall be regarded as personal property.

History: En. Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R.C.M. 1921; re-en. Sec. 6504, R.C.M. 1935; R.C.M. 1947, 72-202(part).

Cross-References

Property in general — real and personal, Title 70, ch. 1.

69-14-504. Payment for stock in installments. An installment of 10% on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in installments not exceeding 25% on the capital stock. These installments shall not be called for more frequently than once in 3 months and shall be payable at the principal office of the corporation to such persons as may be required by the directors.

History: En. Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R.C.M. 1921; re-en. Sec. 6504, R.C.M. 1935; R.C.M. 1947, 72-202(part).

69-14-505. Procedure in case of delinquency in payment of installments. (1) If any installment of stock shall remain unpaid for 60 days after the time specified for payment thereof, whether such stock is held by the original subscriber or his assignee, trustee, or successor in interest, the directors may sell the stock so unpaid at public auction for the installment then due thereon, first giving 30 days' public notice of the time and place of sale in some newspaper of general circulation in this state and by written notice sent by mail within 5 days after default made to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his place of residence or if that is not known to the secretary, then to his address as last reported by the secretary of the corporation. Where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

(2) If any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner.

(3) After the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on

which any installment is in default by reason of the nonpayment thereof, after the expiration of the 30 days' notice of sale hereinbefore provided for.

History: (1), (2)En. Sec. 6, p. 94, Ex. L. 1873; re-en. Sec. 304, 5th Div. Rev. Stat. 1879; re-en. Sec. 682, 5th Div. Comp. Stat. 1887; amd. Sec. 892, Civ. C. 1895; re-en. Sec. 4273, Rev. C. 1907; re-en. Sec. 6505, R.C.M. 1921; re-en. Sec. 6505, R.C.M. 1935; Sec. 72-203, R.C.M. 1947; (3)En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; Sec. 72-204, R.C.M. 1947; R.C.M. 1947, 72-203, 72-204(part).

69-14-506. Increase of capital stock. If the amount of the capital stock shall be found insufficient to enable any such corporation to construct its road, it shall be competent for the directors, upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of its road.

History: En. Sec. 21, p. 104, Ex. L. 1873; re-en. Sec. 319, 5th Div. Rev. Stat. 1879; re-en. Sec. 698, 5th Div. Comp. Stat. 1887; re-en. Sec. 906, Civ. C. 1895; re-en. Sec. 4287, Rev. C. 1907; re-en. Sec. 6519, R.C.M. 1921; re-en. Sec. 6519, R.C.M. 1935; R.C.M. 1947, 72-217.

69-14-507. Authorization to issue securities. Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the law of the state or territory of Montana, the United States, or any other state or territory:

(1) shall have authority and power to make, issue, negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest, and payable at such time or times as its board of directors shall determine;

(2) may negotiate, sell, pledge, or otherwise dispose of the same at such price, on such terms, and in such manner as its board of directors may authorize or determine; and

(3) to secure the payment of all or any of such bonds, securities, or obligations and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises as the board of directors may determine or direct.

History: En. Sec. 706, 5th Div. Comp. Stat. 1887; re-en. Sec. 913, Civ. C. 1895; re-en. Sec. 4294, Rev. C. 1907; re-en. Sec. 6526, R.C.M. 1921; re-en. Sec. 6526, R.C.M. 1935; amd. Sec. 11-149, Ch. 264, L. 1963; R.C.M. 1947, 72-224.

Cross-References

Authorization to borrow money and secure payment, 69-14-556.

69-14-508. Amendment of certificate of incorporation. Any corporation formed under the provisions of this part may, by a majority vote of its board of directors and by the assent of its stockholders, representing at least two-thirds of the subscribed capital stock of such corporation, expressed in writing or at a general or special meeting of stockholders, amend its certificate of incorporation in any one or more of the following particulars:

(1) by more particularly describing the general route of its road or any part thereof;

(2) by correcting or supplying any defect, mistake, or insufficiency in the description thereof contained in said certificate; or

(3) by describing any change or changes in its route or any additions or extensions to or of its line of road or by adding thereto or extending the same to points or termini other than those mentioned in the original certificate of incorporation.

History: **En. Sec. 1, p. 147, L. 1893; re-en. Sec. 920, Civ. C. 1895; re-en. Sec. 4296, Rev. C. 1907; re-en. Sec. 6528, R.C.M. 1921; re-en. Sec. 6528, R.C.M. 1935; R.C.M. 1947, 72-226.**

69-14-509. Record of amendment. A copy of such amendment or of the original certificate of incorporation, as amended, and a copy of the resolution of the board of directors adopting the same, certified by the president and secretary of the company, under the corporate seal, to be correct and to have been adopted by a majority vote of the directors of the company and to have been assented to in writing or by vote of stockholders representing at least two-thirds of the subscribed capital stock of the company, shall be filed with and recorded by the secretary of state. A like copy, certified as aforesaid, shall be filed with and recorded by the county clerk and recorder of the county in which the principal place of business of the company is or shall be situated. From the time of such filing, said original certificate of incorporation shall be deemed to be amended accordingly, and said corporation shall have the same rights and powers and it and the stockholders thereof shall be subject to the same liabilities as if such amendment had been embraced in the original articles or certificate of incorporation.

History: **En. Sec. 2, p. 147, L. 1893; re-en. Sec. 921, Civ. C. 1895; re-en. Sec. 4297, Rev. C. 1907; re-en. Sec. 6529, R.C.M. 1921; re-en. Sec. 6529, R.C.M. 1935; R.C.M. 1947, 72-227.**

69-14-510. Additional amendments permitted. Said certificate and amended certificate may be amended in like manner whenever deemed expedient or necessary by the board of directors and stockholders of the company.

History: **En. Sec. 3, p. 147, L. 1893; re-en. Sec. 922, Civ. C. 1895; re-en. Sec. 4298, Rev. C. 1907; re-en. Sec. 6530, R.C.M. 1921; re-en. Sec. 6530, R.C.M. 1935; R.C.M. 1947, 72-228.**

69-14-511. Authorization to consolidate railroad corporations. (1) Any two or more railroad corporations whose respective lines are wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana or of the United States or of any other state or territory, may consolidate their capital stock, franchises, and property and thereby become one corporation to be known by any name adopted by them, which may be that of one of them, upon such terms and conditions as may be agreed upon by them, in the manner provided in 69-14-512.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section and 69-14-512, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: **En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R.C.M. 1921; Cal. Civ. C. Sec. 473; re-en. Sec. 6524, R.C.M. 1935; R.C.M. 1947, 72-222(part); amd. Sec. 44, Ch. 43, L. 1979.**

69-14-512. Procedure to consolidate. (1) Articles of agreement shall be entered into by such corporations, under their respective corporate seals and the signatures of their respective presidents and secretaries, containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including:

(a) the name of the corporation resulting from such consolidation;

(b) the amount of its capital stock and the number and amount of shares thereof;

(c) the manner of retiring the shares of the capital stock of the corporations so consolidated or of converting the same into or exchanging them for the capital stock of such resultant corporation;

(d) the number which shall constitute the board of directors of such corporation and what officers it shall have;

(e) the persons who shall constitute the first board of directors and officers thereof, their terms of office, and the manner in which their successors shall be elected, which shall be according to the provisions of 69-14-501; and

(f) such other matters as are considered necessary to perfect such consolidation and as may be agreed upon.

(2) Such articles of agreement shall, before the same shall be effectual, be assented to, approved, or ratified by the stockholders of the respective corporations so consolidated at a regular meeting of such stockholders or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least a majority in amount of the outstanding capital stock of such corporations, respectively.

(3) A duplicate of such articles of agreement, together with a copy of the resolutions adopted by the stockholders of such corporations assenting to, approving, or ratifying the same, certified under the corporate seal and the signature of the secretary and verified by a sworn statement of the president and secretary of the corporations stating that such resolution was duly adopted by the vote in favor thereof of the holders of a majority in amount of the outstanding capital stock of the corporations at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the secretary of state. It shall be the duty of the secretary to record the same upon presentation for that purpose. Upon the filing thereof for record, as aforesaid, the corporation formed by such consolidation shall be a corporation by the corporate name mentioned in such articles of agreement and as such shall be perpetual and shall succeed to and have, own, possess, exercise, and enjoy all the powers, rights, franchises, privileges, immunities, and property of every name and nature possessed by the corporations so consolidated or to which they were entitled at the time of such consolidation and shall be entitled to have, own, hold, exercise, possess, and enjoy all the powers, rights, franchises, privileges, and immunities which may at any time appertain to railroad corporations under the general laws of this state. All railroads and branches thereof of the consolidated corporation are subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state.

History: En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R.C.M. 1921; Cal. Civ. C. Sec. 473; re-en. Sec. 6524, R.C.M. 1935; R.C.M. 1947, 72-222(part); amd. Sec. 45, Ch. 43, L. 1979.

69-14-513. Lease or purchase of other railroads. (1) Any railroad corporation, whether chartered by or organized under the laws of the state or territory of Montana, the United States, or any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises, and all other property or appurtenances thereto. The railroad company of any other state of the United States which purchases or leases a railroad or any part thereof in this state:

(a) shall possess and may exercise and enjoy, as to the control, management, and operation of the road, all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain; and

(b) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state.

(2) Any railroad company may sell or lease the whole or any part of its railroad or branches within this state, constructed or to be constructed, together with all property and rights, privileges, and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States, this state, or any other state or territory of the United States.

(3) All roads or branches thereof in this state, whether purchased or leased, shall be subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state.

(4) Before any such lease or purchase shall be effective, it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders, by the holders of a majority in amount of all the outstanding capital stock of the company.

History: En. Sec. 704, 5th Div. Comp. Stat. 1887; re-en. Sec. 912, Civ. C. 1895; re-en. Sec. 4923, Rev. C. 1907; re-en. Sec. 6525, R.C.M. 1921; Cal. Civ. C. Sec. 473a; re-en. Sec. 6525, R.C.M. 1935; R.C.M. 1947, 72-223(part); amd. Sec. 46, Ch. 43, L. 1979.

Cross-References

Assessment — how made, 15-23-202.

69-14-514. Interrailroad business arrangements and out-of-state operations. (1) Any railroad company incorporated pursuant to the laws of this state, the United States, or any state or territory of the United States may at any time, by means of subscription to the capital stock of any other railroad company or by the purchase of its stock or bonds or by guaranteeing its bonds or otherwise, aid such company in the construction of its railroad within or without this state and may take, purchase, hold, sell, and dispose of or guarantee the payment of the capital, stock, bonds, and securities of any other railroad corporation whose line of railroad within this state is continuous of or connects with its own line.

(2) Any company owning or operating a railroad within this state may:

(a) extend the same into any other state or territory;

(b) build, buy, lease, or consolidate with any railroad or railroads in such other state or territory;

(c) operate the same; and

(d) own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road.

(3) Such purchase, sale, consolidation with, or lease may be made or such aid furnished upon such terms or conditions as may be agreed upon by the directors or trustees of the respective companies, but the same shall be approved or ratified by persons holding or representing a majority in amount of the capital stock of each of such companies, respectively, at any annual stockholders' meeting or at a special meeting of the stockholders called for that purpose or by approval in writing of a majority in interest of the stockholders of each company respectively.

(4) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 1, p. 157, L. 1893; re-en. Sec. 923, Civ. C. 1895; re-en. Sec. 4299, Rev. C. 1907; re-en. Sec. 6531, R.C.M. 1921; re-en. Sec. 6531, R.C.M. 1935; R.C.M. 1947, 72-229; amd. Sec. 47, Ch. 43, L. 1979.

Cross-References

Effect of securities registration requirements, 30-10-104.

69-14-515. Acceptance of federal laws by railroad. Any such corporations may accept the provisions of any act of congress providing for the creation of bodies corporate for the purposes of this part, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance.

History: En. Sec. 22, p. 104, Ex. L. 1873; re-en. Sec. 320, 5th Div. Rev. Stat. 1879; re-en. Sec. 699, 5th Div. Comp. Stat. 1887; re-en. Sec. 907, Civ. C. 1895; re-en. Sec. 4288, Rev. C. 1907; re-en. Sec. 6520, R.C.M. 1921; re-en. Sec. 6520, R.C.M. 1935; R.C.M. 1947, 72-218.

69-14-516 through 69-14-530 reserved.

69-14-531. Authorization to operate railroad. Any railroad corporation shall be authorized to locate, construct, maintain, and operate a railroad with a single or double track, with such sidetracks, turnouts, machine shops, offices, and depots as may be necessary, between any points it may select within the places named in the articles of incorporation as termini of such road. It may construct branches to any point in this state and connect its road with that belonging to any other person or corporation and may consolidate with any road not a parallel or competing line.

History: En. Sec. 4, p. 93, Ex. L. 1873; re-en. Sec. 302, 5th Div. Rev. Stat. 1879; re-en. Sec. 680, 5th Div. Comp. Stat. 1887; amd. Sec. 890, Civ. C. 1895; re-en. Sec. 4271, Rev. C. 1907; re-en. Sec. 6503, R.C.M. 1921; Cal. Civ. C. Secs. 454-496; re-en. Sec. 6503, R.C.M. 1935; R.C.M. 1947, 72-201.

69-14-532. Authority to plan, lay out, and construct rail lines. Every railroad corporation may:

(1) cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad;

(2) lay out its road, not exceeding in width 100 feet on each side of its centerline, unless a greater width is required for the purpose of excavation or embankment, and construct and maintain the same, with a single or double track and with such appendages and adjuncts as may be necessary for the convenient use of the same;

(3) construct its road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness, as near as possible, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;

(4) erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of its passengers, freight, and business;

(5) change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided in 69-14-534; but no such change may vary the general route of such road, as contemplated in its articles of incorporation.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part); amd. Sec. 48, Ch. 43, L. 1979.

Cross-References

Maintenance of stations where several rail lines come together, 69-14-118.

General duties of railroad corporation, 69-14-201, 69-14-202, 69-14-205.

Eminent domain, Title 70, ch. 30.

Restriction on building railroad on public watershed, 75-6-112.

Easements for public uses, 77-2-101.

Navigable waters, 85-1-112.

Drains on railroad lands, 85-8-366.

69-14-533. Authority to enter land for survey purposes. For the purposes of 69-14-532(1), the officers, agents, and employees of a railroad corporation may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

Cross-References

Damages, Title 27, ch. 1, parts 2 and 3.

Servitudes, easements, and covenants, Title 70, ch. 17.

69-14-534. Change of location or grade. Whenever any corporation organized under this part shall find it necessary, for the purpose of avoiding annoyance to public travel, dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations or for other reasonable causes, to change the location or grade of any portion of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the articles of incorporation.

History: En. Sec. 13, p. 102, Ex. L. 1873; re-en. Sec. 311, 5th Div. Rev. Stat. 1879; re-en. Sec. 690, 5th Div. Comp. Stat. 1887; re-en. Sec. 898, Civ. C. 1895; re-en. Sec. 4279, Rev. C. 1907; re-en. Sec. 6512, R.C.M. 1921; re-en. Sec. 6512, R.C.M. 1935; R.C.M. 1947, 72-210.

69-14-535. Crossing of roads and streams. It shall be lawful for such corporation, whenever it may be necessary in the construction of its road to cross any road or stream of water, to divert the same from its present location or bed, but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

History: **En. Sec. 16, p. 103, Ex. L. 1873; re-en. Sec. 314, 5th Div. Rev. Stat. 1879; re-en. Sec. 693, 5th Div. Comp. Stat. 1887; re-en. Sec. 901, Civ. C. 1895; re-en. Sec. 4282, Rev. C. 1907; re-en. Sec. 6515, R.C.M. 1921; re-en. Sec. 6515, R.C.M. 1935; R.C.M. 1947, 72-213.**

Cross-References

The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.

69-14-536. Extension of rail lines into Montana. (1) Any railroad corporation chartered by or organized under the laws of the United States or of any state or territory may extend, construct, maintain, and operate its railroad into and through this state to any place within the state and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the state or building any such branch road or any such continuation, the corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch, or continuation and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall record the same when presented for record. Thereupon such corporations shall have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate such extension and build, maintain, and operate such branch or continuation, including the right of eminent domain, which it would have had if it had been incorporated for such purposes under the general laws of Montana. Any corporation of another state or of the United States extending its railroad or any portion thereof into or through this state:

(a) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state; and

(b) is subject to taxation and regulation and control by the laws of this state, in all respects the same as if the line were constructed by corporations organized under the laws of this state.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: **En. Sec. 702, 5th Div. Comp. Stat. 1887; re-en. Sec. 910, Civ. C. 1895; re-en. Sec. 4291, Rev. C. 1907; re-en. Sec. 6523, R.C.M. 1921; re-en. Sec. 6523, R.C.M. 1935; R.C.M. 1947, 72-221; amd. Sec. 49, Ch. 43, L. 1979.**

69-14-537. Annual work and completion of road. (1) Organization under this part shall not be deemed to confer any right to any portion of its line as designated in its articles of incorporation on which a preliminary survey and location shall not have been made.

(2) Every railroad corporation shall be required to complete 15 miles upon each of its lines, branches, or extensions each year subsequent to the filing of articles of incorporation. Each railroad corporation shall complete the whole line of its road within 7 years from the date of filing articles of incorporation.

(3) If such corporation shall fail to comply with the requirements of this section, it shall forfeit its charter and all the rights and privileges conferred by said articles as to any incompleted portion of its line of road. Upon the written

application of any county attorney of a county through which the line of said road would pass, made to the district court, setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause and if, in the court's judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

History: En. Sec. 12, p. 101, Ex. L. 1873; re-en. Sec. 310, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 37, L. 1883; re-en. Sec. 688, 5th Div. Comp. Stat. 1887; amd. Sec. 896, Civ. C. 1895; re-en. Sec. 4277, Rev. C. 1907; re-en. Sec. 6510, R.C.M. 1921; re-en. Sec. 6510, R.C.M. 1935; R.C.M. 1947, 72-208.

Cross-References

Drains on railroad lands, 85-8-366.

69-14-538. Railroads on Indian and military reservations. Any railroad corporation organized under the laws of this state for the purpose of building railroads which extend upon Indian or military reservations within this state shall not forfeit its charter or any rights or privileges by reason of its failure to build and complete any portion of its road upon such reservations until a grant of a right-of-way therefor has been obtained from the United States or any parties authorized in that behalf, and thereafter the provisions of this part shall be applicable to said corporations.

History: En. Sec. 689, 5th Div. Comp. Stat. 1887; re-en. Sec. 897, Civ. C. 1895; re-en. Sec. 4278, Rev. C. 1907; re-en. Sec. 6511, R.C.M. 1921; re-en. Sec. 6511, R.C.M. 1935; R.C.M. 1947, 72-209.

Cross-References

Disclaimer of jurisdiction over Indian lands, Art. I, Mont. Const.

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

69-14-539. Connections between lines of different railroads. Every railroad corporation has power to cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings, and switches and other conveniences in furtherance of the objects of its connections. Every corporation whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant facilities therefor. If the two corporations cannot agree upon the amount of compensation to be made therefor or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in Title 70, chapter 30.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-540 through 69-14-550 reserved.

69-14-551. Establishment of principal office. Every such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road and may change the same at pleasure, giving public notice in one or more newspapers in the state having the largest circulation and giving notice to the secretary of state of such establishment or change.

History: En. Sec. 17, p. 103, Ex. L. 1873; re-en. Sec. 315, 5th Div. Rev. Stat. 1879; re-en. Sec. 694, 5th Div. Comp. Stat. 1887; re-en. Sec. 902, Civ. C. 1895; re-en. Sec. 4283,

Rev. C. 1907; re-en. Sec. 6516, R.C.M. 1921; re-en. Sec. 6516, R.C.M. 1935; R.C.M. 1947, 72-214.

Cross-References

Secretary of State, Title 2, ch. 15, part 4.

69-14-552. Authority to hold and transfer property. Every railroad corporation has power to:

(1) receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad;

(2) purchase or by voluntary grants or donations receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

(3) purchase lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road and all necessary appendages and adjuncts or acquire them in the manner provided in Title 70, chapter 30, for the condemnation of lands.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-553. Acquisition and transfer of real estate. A railroad corporation may acquire by purchase or gift any land in the vicinity of its road or through which the road may pass if the land is convenient or necessary to secure the right-of-way or if the land is granted to aid in the construction of the road and, except as provided in 69-14-931 and 69-14-932, may convey the land in any manner the directors may prescribe. All deeds and conveyances made by the corporation must be signed by the president, under the seal of the corporation.

History: En. Sec. 15, p. 102, Ex. L. 1873; re-en. Sec. 313, 5th Div. Rev. Stat. 1879; re-en. Sec. 692, 5th Div. Comp. Stat. 1887; re-en. Sec. 900, Civ. C. 1895; re-en. Sec. 4281, Rev. C. 1907; re-en. Sec. 6514, R.C.M. 1921; re-en. Sec. 6514, R.C.M. 1935; R.C.M. 1947, 72-212; amd. Sec. 3, Ch. 814, L. 1991.

69-14-554. Right-of-way through canyons. (1) Any such corporation whose right-of-way or whose track upon such right-of-way extends through any canyon, pass, or defile shall not exclude any other such corporation from a passage through the same upon equitable terms. In case of disagreement, upon application of either of the parties, with notice to the other, the same shall be adjusted by a court of competent jurisdiction. If it shall become necessary for any other railroad company passing through the state to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing. When two or more companies desire to pass through the same canyon, pass, or defile, neither shall exclude the other from passing through the same and neither shall have any compensation therefor, except the actual damage done by so doing. Should it be necessary that the said companies should use the same track or bed in passing through such canyon, pass, or defile, the same may be done without any compensation therefor from one to the other, except the actual damage by so doing.

(2) If the passage of any such railroad through the canyon, pass, or defile causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor, as provided by law.

History: En. Sec. 11, p. 100, Ex. L. 1873; re-en. Sec. 309, 5th Div. Rev. Stat. 1879; re-en. Sec. 687, 5th Div. Comp. Stat. 1887; re-en. Sec. 895, Civ. C. 1895; re-en. Sec. 4276, Rev. C. 1907; re-en. Sec. 6509, R.C.M. 1921; re-en. Sec. 6509, R.C.M. 1935; R.C.M. 1947, 72-207.

Cross-References

Reduction of slash while clearing right-of-way for railroad, 76-13-407.

Easements for public uses, 77-2-101.

69-14-555. Judgment liens against railroad property. A judgment against any railroad corporation for any injury to person or property or for material furnished or work or labor done upon any of the property of such corporation shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust deed provided for in this part.

History: En. Sec. 707, 5th Div. Comp. Stat. 1887; re-en. Sec. 914, Civ. C. 1895; re-en. Sec. 4295, Rev. C. 1907; re-en. Sec. 6527, R.C.M. 1921; re-en. Sec. 6527, R.C.M. 1935; R.C.M. 1947, 72-225.

Cross-References

Mortgages, Title 71, ch. 1.

Liens, Title 71, ch. 3.

69-14-556. Authorization to borrow money and secure payment. Any corporation organized under this part:

(1) shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties; and

(2) may execute bonds therefor in sum of not less than $100 and secure the payment thereof by mortgage or pledge of the property and income of such corporation.

History: En. Sec. 14, p. 102, Ex. L. 1873; re-en. Sec. 312, 5th Div. Rev. Stat. 1879; re-en. Sec. 691, 5th Div. Comp. Stat. 1887; re-en. Sec. 899, Civ. C. 1895; re-en. Sec. 4280, Rev. C. 1907; re-en. Sec. 6513, R.C.M. 1921; re-en. Sec. 6513, R.C.M. 1935; amd. Sec. 11-148, Ch. 264, L. 1963; R.C.M. 1947, 72-211.

Cross-References

Authorization to issue securities, 69-14-507.

69-14-557. State not liable for obligations of railroad. Nothing in this part shall be construed to make the state or any municipality therein liable for any debts or obligations of any character which may be contracted by such corporations.

History: En. Sec. 19, p. 104, Ex. L. 1873; re-en. Sec. 317, 5th Div. Rev. Stat. 1879; re-en. Sec. 696, 5th Div. Comp. Stat. 1887; re-en. Sec. 904, Civ. C. 1895; re-en. Sec. 4285, Rev. C. 1907; re-en. Sec. 6518, R.C.M. 1921; re-en. Sec. 6518, R.C.M. 1935; R.C.M. 1947, 72-216.

69-14-558. Transportation of passengers and property. Every railroad corporation has power to:

(1) carry persons and property on their railroad and receive tolls or compensation therefor;

(2) regulate the time and manner in which passengers and property shall be transported and the tolls and compensation to be paid therefor within the limits prescribed by law and subject to alteration, change, or amendment by the legislature at any time.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

Cross-References

Payment of liquor taxes by passenger carriers, 16-1-402.

Railroad to report beer transported, 16-3-235.

Passenger carriers to obtain liquor licenses, 16-4-302.

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

Storage of unclaimed property, 70-9-402.

Reduction of slash while clearing right-of-way for railroad, 76-13-407.

Inspection of livestock — exception, 81-3-212.

69-14-559. Maintenance of hotels in parks and along lines. Any railway company or corporation, organizing under the laws of the United States, the state of Montana, or of any other state or territory and owning or operating a line of railway in the state of Montana, may, in connection with its railway business, construct, acquire, own, operate, and maintain, in or on public or national parks traversed, touched, or reached by its line of railway in the state of Montana and at convenient points along its line, hotels, inns, and restaurants for the accommodation of the employees and patrons of said railway company or corporation, either in its own name or in the name of another corporation, provided that the stock of such other corporation is owned or controlled by said railway company or corporation.

History: En. Sec. 1, Ch. 82, L. 1915; re-en. Sec. 6508, R.C.M. 1921; re-en. Sec. 6508, R.C.M. 1935; R.C.M. 1947, 72-206.

Cross-References

Glacier National Park, 2-1-205.

Yellowstone National Park, 2-1-207.

Concurrent jurisdiction of United States over national park land, 2-1-214.

69-14-560. Regulation of rates of railroad corporations. Any railroad corporation within this state shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense in the sum of $1,000, for the second violation of the same provision, $2,000, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than $5,000 or more than $10,000, if the corporation shall:

(1) ask, charge, or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter, or passenger;

(2) make any unjust discrimination in its rates;

(3) willfully neglect to keep a table of its passenger tariff and rates of freight conspicuously posted in each depot within this state.

History: En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R.C.M. 1921; amd. Sec. 1, Ch. 7, L. 1929; re-en. Sec. 6521, R.C.M. 1935; R.C.M. 1947, 72-219(part).

Cross-References

Illegal discrimination, Title 49, ch. 2.

69-14-561. Regulation of railroad equipment. Every railroad corporation has power to:

(1) regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road; and

(2) establish, execute, and enforce all needful and proper rules for the management of its business transactions usual and proper for railroad corporations.

History: **En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).**

Cross-References

Headlight and speedometer requirements, 69-14-236.

69-14-562. Regulation of health and safety on railroads. Any railroad corporation within this state shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense in the sum of $1,000, for the second violation of the same provision, $2,000, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than $5,000 or more than $10,000, if the corporation shall:

(1) neglect to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight;

(2) use any highly inflammable oils for lighting any car on its passenger trains;

(3) transport within this state on any of its passenger cars any oil of vitriol, gunpowder, lucifer matches, nitroglycerine, glynon oil, nytroleum or blasting oil, nitrate oil, powder mixed with any such oil or fiber saturated therewith, duolin or giant powder, blasting powder, or other goods of a dangerous nature;

(4) in any incorporated city or town in this state, run any train at a rate of speed forbidden by the laws of this state or the ordinances of such city or town;

(5) run any train over any unsafe bridge, trestlework, or aqueduct in this state;

(6) fail to have upon any locomotive in use by it in this state a bell and whistle in fit condition for use thereon;

(7) permit any locomotive to approach any highway, road, or railroad crossing without causing the whistle to be sounded at a point between 50 and 80 rods from the crossing, the bell to be rung from said point until the crossing is reached;

(8) willfully fail to make any report herein required or which may be hereafter required by any law of this state.

History: **En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R.C.M. 1921; amd. Sec. 1, Ch. 7, L. 1929; re-en. Sec. 6521, R.C.M. 1935; R.C.M. 1947, 72-219(part).**

Cross-References

Willfully defined, 1-1-204.

Municipal regulation of railroads, 7-14-4301.

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

Investigation of health and safety of operation authorized, 69-14-115.

General duties of railroad corporation, 69-14-201, 69-14-202, 69-14-205.

69-14-563. Construction and operation of telegraph line. Any such corporation is hereby authorized to construct, maintain, and operate a telegraph line along its road.

History: En. Sec. 18, p. 103, Ex. L. 1873; re-en. Sec. 316, 5th Div. Rev. Stat. 1879; re-en. Sec. 695, 5th Div. Comp. Stat. 1887; re-en. Sec. 903, Civ. C. 1895; re-en. Sec. 4284, Rev. C. 1907; re-en. Sec. 6517, R.C.M. 1921; re-en. Sec. 6517, R.C.M. 1935; R.C.M. 1947, 72-215(part).

Part 6

Railroad Highway Crossings

Part Cross-References

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

Authority of Transportation Commission to prioritize expenditures on railroad crossings, 60-2-121.

Obedience to signal indicating approach of train, 61-8-347.

Railroad crossings — stops required, 61-8-348, 61-8-349.

Moving heavy equipment at grade crossings, 61-8-350.

Penalty for interference with official railroad signs or signals, 61-8-713.

Operation of trains at grade crossings, 69-14-239.

69-14-601. Definition of railroad company. The words "railroad company", as used in 69-14-601 through 69-14-611, shall be taken and construed to mean any corporation, person, or association of persons owning or operating a railroad.

History: En. Sec. 12, Ch. 148, L. 1919; re-en. Sec. 6636, R.C.M. 1921; re-en. Sec. 6636, R.C.M. 1935; R.C.M. 1947, 72-712.

69-14-602. Construction and maintenance of railroad crossings outside of incorporated cities and towns. At all places in the state, outside of incorporated cities and towns where a lawfully established public highway crosses any railroad, it shall be the duty of the railroad company owning or operating such railroad to construct and thereafter maintain in proper condition a good and safe crossing.

History: En. Sec. 1, Ch. 148, L. 1919; re-en. Sec. 6625, R.C.M. 1921; re-en. Sec. 6625, R.C.M. 1935; R.C.M. 1947, 72-701.

Cross-References

Roads crossing railroad, 7-14-2612.

Safety of crossings, 69-14-532.

Reflectorized material on crossing signs required, 69-14-612.

69-14-603. Railroad crossings in unincorporated towns or villages. In any unincorporated community ordinarily known as a village or town where the public necessity and convenience require a railroad crossing at the intersection of the railroad with any street or highway, whether lawfully established or otherwise, which is commonly used by the public, the board of county commissioners of the county may order the construction and maintenance of such railroad crossing. Upon such order becoming final and effective, it shall be the duty of the railroad company to construct and maintain in proper condition a good and safe crossing. The board of county commissioners may order more than one railroad crossing in such unincorporated community, as provided in this section, when the public necessity and convenience require more than one such crossing to afford reasonable facilities for public travel.

History: En. Sec. 2, Ch. 148, L. 1919; re-en. Sec. 6626, R.C.M. 1921; re-en. Sec. 6626, R.C.M. 1935; R.C.M. 1947, 72-702.

Cross-References

Reflectorized material on crossing signs required, 69-14-612.

69-14-604. Procedure to order construction of crossing. If a board of county commissioners orders the construction of a railroad crossing, the board shall enter an order upon its minutes, specifying the place of the crossing. A copy of the order must be served upon the railroad company, and a copy must be immediately mailed to the public service commission.

History: En. Sec. 3, Ch. 148, L. 1919; re-en. Sec. 6627, R.C.M. 1921; re-en. Sec. 6627, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 72-703; amd. Sec. 10, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 deleted third sentence that read: "Service of said order may be made upon the railroad company by delivering such copy to any station agent employed in connection with the operation of said railroad in said county"; and made minor changes in style.

69-14-605. Time for completion of crossing. It shall be the duty of a railroad company to construct a crossing ordered by the board of county commissioners of any county within 60 days after service of such order; provided, however, that in case any crossing shall be ordered requiring any extended period of construction, such additional time as is reasonably necessary to complete the same shall be allowed by the commission upon the proper application for such extension.

History: En. Sec. 4, Ch. 148, L. 1919; re-en. Sec. 6628, R.C.M. 1921; re-en. Sec. 6628, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-704.

69-14-606. Role of public service commission with respect to crossings. (1) The commission may enforce the orders of any board of county commissioners for the construction of railroad crossings and may pass upon the reasonableness of any such order and modify, change, or annul the same.

(2) Whenever any railroad crossing has been ordered by the county commissioners, as herein provided, the railroad company may, within 30 days after the service of such order, serve upon the commission a notice stating why the order is considered unreasonable or unjust and requesting that the commission hold a hearing for the purpose of determining whether or not the construction of such crossing should reasonably be required. The commission shall thereupon institute a hearing for this purpose, and all interested parties shall be given reasonable notice and an opportunity to be heard. The commission may, after such hearing, either affirm, modify, or annul such order.

History: En. Secs. 5, 6, Ch. 148, L. 1919; re-en. Secs. 6629, 6630, R.C.M. 1921; re-en. Secs. 6629, 6630, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-705, 72-706; amd. Sec. 50, Ch. 43, L. 1979.

Cross-References

Power of Public Service Commission with respect to spurs, sidetracks, stockyards, and chutes, 69-14-811, 69-14-812.

69-14-607. Overhead or underground crossings. (1) No railroad crossing, other than a grade crossing, shall be ordered by any board of county commissioners.

(2) (a) The public service commission may, however, upon petition or request in writing of any board of county commissioners, order an overhead or

underground crossing at any place where a railroad crossing has not been constructed and is required by the provisions of 69-14-601 through 69-14-611; provided, in its judgment, the safety, necessity, and convenience of the traveling public require such crossing.

(b) When any such petition or request is presented, the commission shall fix a date for hearing the same and shall give at least 10 days' written notice to the board of county commissioners and the owner or operator of the railroad to be affected by such order of the time fixed for the hearing. At such hearing, the commission shall hear all testimony offered as to the safety, necessity, and convenience of the traveling public requiring such a crossing and the expense of constructing and maintaining the same and shall make such investigation and inspection of the conditions at the place of crossing as may be deemed necessary or advisable and shall thereupon determine whether such order should be made.

(3) In the event an overhead or underground crossing is ordered, the commission may in its discretion require the same to be constructed and maintained by and at the expense of the railroad company or may apportion the expense between the railroad company and the county in which said crossing is located. The part of the expense apportioned to said county, if any, shall be paid to the railroad company from the funds of said county properly applicable to the payment of such expense.

History: En. Sec. 7, Ch. 148, L. 1919; re-en. Sec. 6631, R.C.M. 1921; re-en. Sec. 6631, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-707.

69-14-608. Court action to determine justness and reasonableness of commission order. The board of county commissioners or the railroad company affected by an order or decision of the commission made pursuant to the provisions of 69-14-601 through 69-14-611 may commence an action in any court having jurisdiction to determine the justness and reasonableness of such order or decision. In any such action the order or decision sought to be reviewed shall prima facie be deemed just, reasonable, and proper.

History: En. Sec. 8, Ch. 148, L. 1919; re-en. Sec. 6632, R.C.M. 1921; re-en. Sec. 6632, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-708.

69-14-609. Extension of time to comply with order. In the event of an application to the commission to review any order made by the board of county commissioners and in the event of any action to review any order or decision of the commission, as herein provided, the time within which to comply with said order shall be extended and the railroad company shall have 60 days after the order or decision becomes final and effective within which to comply with the same. The time for compliance as herein provided may be extended, for good cause shown, by the commission.

History: En. Sec. 9, Ch. 148, L. 1919; re-en. Sec. 6633, R.C.M. 1921; re-en. Sec. 6633, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-709.

69-14-610. Effect of crossing provisions on liability of railroad. Nothing contained in 69-14-601 through 69-14-611 shall in any way affect the liability of any railroad company for damage to persons or property injured at any crossings.

History: En. Sec. 10, Ch. 148, L. 1919; re-en. Sec. 6634, R.C.M. 1921; re-en. Sec. 6634, R.C.M. 1935; R.C.M. 1947, 72-710.

Cross-References

Liability, Title 27, ch. 1, part 7.

69-14-611. Penalty for failure to comply with crossing order. Any railroad company failing to construct any crossing after the order or decision requiring the construction of same has become final, within the time herein provided or within any extension of time granted by the commission, shall for each day's failure pay to the state a fine of not less than $10 or more than $100, to be recovered in a civil action in the name of the state, and it shall be the duty of the county attorney of the county within which is located the site of the proposed crossing to prosecute such action.

History: En. Sec. 11, Ch. 148, L. 1919; re-en. Sec. 6635, R.C.M. 1921; re-en. Sec. 6635, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-711.

69-14-612. Reflectorized material on crossing signs required. Within 2 years after April 9, 1987, a railroad company shall install and maintain reflectorized material on the front and back sides of crossbuck blades on all public crossing signs the railroad company is required to construct and maintain under 69-14-602 and 69-14-603.

History: En. Sec. 1, Ch. 448, L. 1987.

69-14-613 through 69-14-620 reserved.

69-14-621 through 69-14-625. Repealed. Sec. 2, Ch. 359, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

69-14-621. (1)En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R.C.M. 1921; re-en. Sec. 3842, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1957; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-164, R.C.M. 1947; (2)En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R.C.M. 1921; re-en. Sec. 3845, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-167, R.C.M. 1947; R.C.M. 1947, 72-164(part), 72-167(part).

69-14-622. En. Sec. 2, Ch. 151, L. 1919; re-en. Sec. 3843, R.C.M. 1921; re-en. Sec. 3843, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-165.

69-14-623. En. Sec. 3, Ch. 151, L. 1919; re-en. Sec. 3844, R.C.M. 1921; re-en. Sec. 3844, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-166.

69-14-624. En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R.C.M. 1921; re-en. Sec. 3845, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-167(part).

69-14-625. En. Sec. 5, Ch. 151, L. 1919; re-en. Sec. 3846, R.C.M. 1921; re-en. Sec. 3846, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-168.

69-14-626. Prohibition on extended obstruction of highway crossings. (1) It shall be unlawful for any corporation, association, or company to willfully obstruct, blockade, interfere with, or prevent the free use of any public highway within the state where such highway crosses any railroad track outside of incorporated cities and towns by stopping any railroad train, car, engine, or locomotive for more than 15 minutes at any one time or by placing, depositing, or leaving any article or thing whatsoever on any railroad track at the point where any public highway crosses such track outside of incorporated cities and towns.

(2) Any corporation, association, or company so obstructing, blockading, or interfering with the free use of any such highway shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $100. This section shall not be construed as repealing any existing laws prohibiting encroachments upon or obstruction of public highways.

History: En. Sec. 1, Ch. 43, L. 1907; Sec. 4358, Rev. C. 1907; re-en. Sec. 6595, R.C.M. 1921; re-en. Sec. 6595, R.C.M. 1935; R.C.M. 1947, 72-640.

Part 7

Protection of Livestock and Agricultural Resources

Part Cross-References

Funds earmarked for railroad crossings, 15-70-102.

Limitation on action for killing or injuring stock by railroad, 27-2-207.

Inspection of livestock transported by railroad — exception, 81-3-212.

Driving livestock on railroad tracks, 81-5-102.

69-14-701. Maintenance of fences — exception — penalty. (1) Railroad corporations shall build and maintain a legal fence on both sides of their track and property and maintain cattle guards at all crossings over which cattle or other domestic animals cannot pass, except that a fence is not required in places where water ditches, embankments, terrain, or other sufficient protection prevents domestic animals from straying onto the right-of-way. An affected landowner or lessee may construct, maintain, or repair a fence subject to approval and reimbursement by the railroad corporation.

(2) If a railroad corporation does not build and maintain the fence and guards and its engines or cars, because of the lack of a fence or maintenance of a fence, kill or maim cattle or other domestic animals upon its line of road, it must pay to the owner of the cattle or other domestic animals, in all cases, a fair market price for the animal, unless it occurred through the neglect or fault of the owner of the animal killed or maimed; however, nothing in this section may be construed to prevent a person from recovering damages from a railroad corporation for its negligent killing or injury to cattle or other domestic animals at spurs, sidings, Ys, crossings, and turntables.

(3) An affected landowner or lessee may file a complaint with the public service commission when a fence is in disrepair or in need of maintenance. The public service commission shall certify that the fence is in need of repair and notify the railroad corporation responsible for the fence. The public service commission shall forward a copy of the complaint, a certification that the fence is in need of repair, and a verification that the railroad corporation was notified to the county attorney of the county within which the site of the fence in disrepair is located. Upon notice, the railroad corporation responsible for the fence shall repair the fence within 30 days, weather permitting. A railroad corporation failing to repair the fence within 30 days of notification shall pay a fine of $100 plus $50 a day each day after the 30th day of notification, for failure to repair the fence. The fine must be recovered in a civil action and deposited in the county general fund. It is the duty of the county attorney of the county within which the site of the fence in disrepair is located to prosecute the action.

History: En. Sec. 1, p. 267, L. 1891; en. Sec. 950, Civ. C. 1895; amd. Sec. 1, Ch. 29, L. 1905; amd. Sec. 1, Ch. 59, L. 1907; re-en. Sec. 4308, Rev. C. 1907; re-en. Sec. 6540, R.C.M. 1921; Cal. Civ. C. Sec. 485; re-en. Sec. 6540, R.C.M. 1935; R.C.M. 1947, 72-401; amd. Sec. 1, Ch. 363, L. 1993.

Cross-References

Negligence, 27-1-701, 27-1-702.

Costs of cattle guards as part of eminent domain proceedings, 70-30-301.

Legal fences defined, 81-4-101.

Where cattle guards are to be maintained, 81-4-102.

69-14-702. Crossings to be maintained. (1) Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state which may fence its right-of-way shall make crossings through its fence and over its roadbed along its right-of-way every 4 miles thereof or as near thereat as may be practicable.

(2) Such openings shall not be less than 60 feet in width.

History: (1)En. Sec. 1, p. 148, L. 1893; re-en. Sec. 959, Civ. C. 1895; re-en. Sec. 4318, Rev. C. 1907; re-en. Sec. 6552, R.C.M. 1921; re-en. Sec. 6552, R.C.M. 1935; Sec. 72-502, R.C.M. 1947; (2)En. Sec. 2, p. 148, L. 1893; re-en. Sec. 960, Civ. C. 1895; re-en. Sec. 4319, Rev. C. 1907; re-en. Sec. 6553, R.C.M. 1921; re-en. Sec. 6553, R.C.M. 1935; Sec. 72-503, R.C.M. 1947; R.C.M. 1947, 72-502, 72-503(part).

69-14-703. Placement of cattle guards. The railroad company or lessee, person, company, or corporation operating any railroad shall place cattle guards on either side of the openings required by 69-14-702, sufficient to prevent any cattle from entering upon the right-of-way enclosed.

History: En. Sec. 2, p. 148, L. 1893; re-en. Sec. 960, Civ. C. 1895; re-en. Sec. 4319, Rev. C. 1907; re-en. Sec. 6553, R.C.M. 1921; re-en. Sec. 6553, R.C.M. 1935; R.C.M. 1947, 72-503(part).

Cross-References

Costs of cattle guards as part of eminent domain proceedings, 70-30-301.

Where cattle guards are to be maintained, 81-4-102.

69-14-704. Openings under trestles. The railroad company, lessee, person, or company operating any railroad, in addition to the openings required by 69-14-702, shall leave unfenced any places where the railroad runs over trestles that are sufficiently high for cattle to go underneath the same.

History: En. Sec. 3, p. 148, L. 1893; re-en. Sec. 961, Civ. C. 1895; re-en. Sec. 4320, Rev. C. 1907; re-en. Sec. 6554, R.C.M. 1921; re-en. Sec. 6554, R.C.M. 1935; R.C.M. 1947, 72-504.

69-14-705. Application of provisions dealing with crossings. The provisions of 69-14-702 through 69-14-706 shall only apply to grazing country.

History: En. Sec. 4, p. 148, L. 1893; re-en. Sec. 962, Civ. C. 1895; re-en. Sec. 4321, Rev. C. 1907; re-en. Sec. 6555, R.C.M. 1921; re-en. Sec. 6555, R.C.M. 1935; R.C.M. 1947, 72-505.

69-14-706. Violation of crossing provisions. Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state violating the provisions of 69-14-702 through 69-14-705 shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in a sum not less than $100 and not more than $500.

History: En. Sec. 5, p. 148, L. 1893; re-en. Sec. 963, Civ. C. 1895; re-en. Sec. 4322, Rev. C. 1907; re-en. Sec. 6556, R.C.M. 1921; re-en. Sec. 6556, R.C.M. 1935; R.C.M. 1947, 72-506.

69-14-707. Liability for negligent destruction of domestic animals. Every railroad corporation or company operating any railroad or branch thereof within the limits of this state which shall negligently injure or kill any horse, mare, gelding, filly, jack, jenny, mule, cow, heifer, bull, ox, steer, calf, or other domestic animal by running any engine or car over or against any such animal shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof. The killing or injury shall be prima facie evidence of negligence on the part of such corporation or company.

History: En. Sec. 1, p. 68, L. 1881; re-en. Sec. 713, 5th Div. Comp. Stat. 1887; amd. Sec. 951, Civ. C. 1895; re-en. Sec. 4309, Rev. C. 1907; re-en. Sec. 6541, R.C.M. 1921; re-en. Sec. 6541, R.C.M. 1935; R.C.M. 1947, 72-402.

Cross-References

Negligence, 27-1-701, 27-1-702.

69-14-708. Records of accidents involving livestock. (1) A railroad company must report to the department of livestock any livestock killed or injured by a train or railroad equipment on the railroad right-of-way within 30 days after the killing or injuring of any livestock.

(2) A railroad company failing to provide the notice provided for in subsection (1) is liable to the owner of the animal killed or injured, whether negligently done or not. The court or jury before whom an action is tried for the recovery of damages may in its discretion render a verdict and judgment for the amount of the value of the livestock killed or the amount of damages sustained by reason of injury.

History: (1) thru (3)En. Sec. 3, p. 70, L. 1881; amd. Sec. 720, 5th Div. Comp. Stat. 1887; amd. Sec. 953, Civ. C. 1895; amd. Sec. 2, Ch. 29, L. 1905; re-en. Sec. 4311, Rev. C. 1907; re-en. Sec. 6542, R.C.M. 1921; re-en. Sec. 6542, R.C.M. 1935; Sec. 72-403, R.C.M. 1947; (4)En. Sec. 721, 5th Div. Comp. Stat. 1887; re-en. Sec. 954, Civ. C. 1895; re-en. Sec. 4312, Rev. C. 1907; re-en. Sec. 6543, R.C.M. 1921; re-en. Sec. 6543, R.C.M. 1935; Sec. 72-404, R.C.M. 1947; R.C.M. 1947, 72-403, 72-404; amd. Sec. 72, Ch. 83, L. 1989; amd. Sec. 11, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 in (1) substituted current language requiring railroad company to report livestock killed or injured to Department of Livestock for former provision requiring record to be kept at county seat of train killing or injuring animal (see 1997 Session Law for former text); inserted (2) regarding liability of railroad failing to give notice to the Department; deleted former (2), (3), and (4) concerning inspection of records of animals killed or injured, notice of a railroad station designated to keep records, and liability of railroad failing to keep required records (see 1997 Session Law for former text); and made minor changes in style.

69-14-709. Allowance of attorney's fee. (1) Except as provided in subsection (2), whenever any of the livestock referred to in this part shall be injured or killed as therein recited and the owner thereof shall thereafter institute an action for the recovery of the loss or damage so sustained by him, the court in which such action shall be brought shall tax, as a part of the costs therein, a reasonable sum to be fixed by the court as a fee to the attorney of the prevailing or successful party for conducting such action. Said fee so fixed and allowed shall be collected in like manner as other costs.

(2) No such fee shall be allowed by the court or collected from the defendant when it shall appear from the pleadings or proof in any such action that the defendant prior to the institution of such action offered or agreed to pay to the plaintiff therein, in settlement of the loss or damages claimed, a sum equal to or in excess of the amount recovered as damages in said action or unless the plaintiff, at least 40 days prior to the commencement of the action, shall have made demand, in writing, upon the defendant, his agent, or attorney for the sum of money claimed as indemnity for the killing of said livestock.

History: En. Sec. 722, 5th Div. Comp. Stat. 1887; amd. Sec. 955, Civ. C. 1895; amd. Sec. 1, Ch. 101, L. 1903; re-en. Sec. 4313, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1919; amd. Sec. 1, Ch. 226, L. 1921; re-en. Sec. 6544, R.C.M. 1921; re-en. Sec. 6544, R.C.M. 1935; R.C.M. 1947, 72-405.

Cross-References

Costs, Title 25, ch. 10.

69-14-710. Tender or deposit of value of animal. If a corporation, association, company, or person so owning, controlling, or operating a railroad or branch thereof kills or injures an animal as aforesaid and tenders to the owner thereof or to his agent in that behalf the amount which they consider to be the value thereof or the damage thereto, as the case may be or if the railroad, corporation, association, company, or person deposits with the department of livestock such amount for the owner thereof and the owner or his agent refuses to accept the amount in settlement thereof, then the owner shall pay all costs incurred in any action instituted, after the tender or deposit, to recover the value or damage unless he recovers in the action more than the amount so tendered.

History: En. Sec. 723, 5th Div. Comp. Stat. 1887; re-en. Sec. 956, Civ. C. 1895; re-en. Sec. 4314, Rev. C. 1907; re-en. Sec. 6545, R.C.M. 1921; re-en. Sec. 6545, R.C.M. 1935; amd. Sec. 15, Ch. 315, L. 1974; R.C.M. 1947, 72-406.

69-14-711. Payment of damages to department of livestock. (1) If livestock are killed by railroad corporations in violation of 69-14-701 and if the owner of the livestock does not claim or assert a claim against the railroad or railroad corporation for the value of the livestock killed within 6 months from the date the animal is killed, the department of livestock shall demand from the railroad or railroad corporation payment in damages for livestock. The department shall institute and prosecute, in the name of the state, actions against the railroad or railroad companies in a court of competent jurisdiction to recover damages if the railroad fails, neglects, or refuses to make payment of the amount of the claim filed by the department.

(2) The money recovered shall be paid to the department and shall be held by the department for a period of 2 years after the date of its receipt. If the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed within the 2 years, the money shall be paid to the state treasurer and credited to the stock estray fund. If the owner of the animal killed proves his claim within the 2 years, the department may pay the claimant the amount of money to which he is entitled for the animal killed by the railroad or railroad company, the damages for which have been collected by the department.

(3) In actions prosecuted for the recovery of the value of livestock killed under this section, the prevailing or successful party shall recover all costs. If the owner of an animal killed has not presented his claim against the railroad or railroad company which caused it to be killed, a settlement made by the department constitutes a bar against an action by the owner of the animal.

History: En. Sec. 1, Ch. 183, L. 1907; Sec. 4315, Rev. C. 1907; amd. Sec. 2, Ch. 99, L. 1919; re-en. Sec. 6546, R.C.M. 1921; re-en. Sec. 6546, R.C.M. 1935; amd. Sec. 16, Ch. 315, L. 1974; R.C.M. 1947, 72-407.

Cross-References

Legal assistance for Public Service Commission, 69-14-132.

69-14-712. Repealed. Sec. 17, Ch. 235, L. 1997.

History: En. Sec. 726, 5th Div. Comp. Stat. 1887; re-en. Sec. 958, Civ. C. 1895; re-en. Sec. 4317, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1919; re-en. Sec. 6548, R.C.M. 1921; re-en. Sec. 6548, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1949; amd. Sec. 17, Ch. 315, L. 1974; R.C.M. 1947, 72-409.

69-14-713. Violation of provisions dealing with injury to livestock. (1) Except as otherwise provided in this chapter, a person who violates any of the provisions of 69-14-701 through 69-14-711 relating to livestock killed or injured by railroads is guilty of a misdemeanor.

(2) A person violating any of the provisions of 69-14-711 shall upon conviction be punished by a fine of not less than $10 or more than $300, by imprisonment in the county jail for a period of not less than 10 days or more than 60 days, or both.

History: (1)En. Sec. 720, Pen. C. 1895; re-en. Sec. 8561, Rev. C. 1907; re-en. Sec. 11278, R.C.M. 1921; re-en. Sec. 11278, R.C.M. 1935; Sec. 94-35-174, R.C.M. 1947; redes. 72-507 by Sec. 29, Ch. 513, L. 1974; Sec. 72-507, R.C.M. 1947; (2)En. Sec. 4, Ch. 99, L. 1919; amd. Sec. 1, Ch. 49, L. 1921; re-en. Sec. 6549, R.C.M. 1921; re-en. Sec. 6549, R.C.M. 1935; Sec. 72-410, R.C.M. 1947; R.C.M. 1947, 72-410, 72-507; amd. Sec. 51, Ch. 43, L. 1979; amd. Sec. 12, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 in (1), at end of exception clause, inserted "in this chapter" and near middle deleted reference to 69-14-712; in (2), after "provisions of 69-14-711", deleted "or 69-14-712"; and made minor changes in style.

69-14-714. Payment of claim — penalty. Upon determining liability for the amount of the value of an animal killed or maimed under the circumstances described in 69-14-701, the railroad corporation shall pay the plaintiff within 30 days. Upon failure to pay the plaintiff within 30 days, interest at a rate of 10% a year accrues on the amount due until the claim is paid.

History: En. Sec. 2, Ch. 363, L. 1993.

69-14-715 through 69-14-720 reserved.

69-14-721. Control of fire hazard along right-of-way. A railroad corporation or railroad company operating a railroad within this state shall keep its railroad track and either side of the track for a reasonable distance within its right-of-way, free from dead grass, weeds, or any dangerous or combustible material. A railroad corporation or company failing to keep its railroad track and each side of the track free of combustible material as specified in this section is liable for any damages on account of fire emanating from trains, track maintenance, or other railroad operations. A railroad corporation or company may not be required to keep free of combustible material, as specified in this section, land that is not a part of its right-of-way.

History: En. Sec. 7, p. 71, L. 1881; re-en. Sec. 719, 5th Div. Comp. Stat. 1887; amd. Sec. 952, Civ. C. 1895; re-en. Sec. 4310, Rev. C. 1907; re-en. Sec. 6551, R.C.M. 1921; re-en. Sec. 6551, R.C.M. 1935; R.C.M. 1947, 72-501; amd. Sec. 1, Ch. 588, L. 1995.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Penalty for setting or leaving fire causing damage, 50-63-102.

Liability of offender for damages and costs, 50-63-103.

Reduction of slash and debris along right-of-way, 76-13-407.

69-14-722. Maintenance of fireguards. (1) Every railroad corporation operating its lines of road or any part thereof within this state shall, between April 15 and July 1 in each year, plow in a good and workmanlike manner, covering the sod well, upon each side of its line of road, wherever it passes through a range or grazing country, a continuous strip of not less than 6 feet in width on each side of its track, as a fireguard. Said strip shall, as near as practicable, run parallel with the line or lines of said railroad, and in addition to such plowing, said railroad company shall cause to be burned, between July 15 and September 15 of each year, all the grass and vegetation between the said plowed strips and a line of 50 feet inside said plowed strips. Said plowing shall be not less than 300 feet from the center of the railroad track on each side of same except in cases of cultivated fields, and then such plowing and burning shall be done closer to such railroad but not less than 70 feet from the center of the track.

(2) Such fireguard, so plowed and burned, need not be constructed within the limits of any town, village, or city; in private fields under cultivation; along the line of such railroad whenever the same runs through the mountains; or elsewhere where such plowing or burning would be impracticable. Said fireguard or portion thereof need not be plowed or burned on or through any lands which may be released from the operation of this section by the board of county commissioners of the county wherein such land is situated, by their written certificate of release filed in the office of the county clerk of the county.

(3) If any railroad company fails to comply with any of the provisions of this section, the board of county commissioners of the county wherein such violation occurs shall cause the neglected plowing, burning, or both to be done and may, in a suit to be brought in their name as said board in the district court having jurisdiction, recover double the amount of the cost of such plowing, burning, or both, with reasonable attorney fees to be fixed by the court. Such railroad company shall be liable further for all damages caused by its failure to comply with this section.

History: (1), (2)En. Sec. 1, p. 163, L. 1901; amd. Sec. 1, Ch. 63, L. 1903; re-en. Sec. 4360, Rev. C. 1907; re-en. Sec. 6597, R.C.M. 1921; re-en. Sec. 6597, R.C.M. 1935; Sec. 72-642, R.C.M. 1947; (3)En. Sec. 2, p. 164, L. 1901; amd. Sec. 2, Ch. 63, L. 1903; re-en. Sec. 4361, Rev. C. 1907; re-en. Sec. 6598, R.C.M. 1921; re-en. Sec. 6598, R.C.M. 1935; Sec. 72-643, R.C.M. 1947; R.C.M. 1947, 72-642, 72-643.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Penalty for setting or leaving fire causing damage, 50-63-102.

Liability of offender for damages and costs, 50-63-103.

Part 8

Loading Platforms and Spurs

69-14-801. Maintenance of loading platform by railroad. (1) A railroad company doing business in this state shall, within 60 days after notice from the commission, erect one or more safe platforms for the transfer of commodities to cars. The platforms must be erected to not endanger life and property.

(2) If a railroad company, after receiving notice as provided for in this section, fails, refuses, or neglects to erect platforms as required by this section within 60 days, the commission shall notify the railroad company to appear before it at a certain time and place and show cause why the commission should not issue an order requiring the railroad company to comply with the requirements of this section. The commission may, after the hearing, issue an order commanding the railroad company to erect the platform.

(3) A notice required to be served upon a railroad company to carry out any of the provisions of this section or similar provisions relating to the enlarging of platforms may be served upon any agent of the railroad company within the state.

History: En. Sec. 1, Ch. 26, L. 1913; re-en. Sec. 3822, R.C.M. 1921; re-en. Sec. 3822, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-145; amd. Sec. 1, Ch. 108, L. 1979; amd. Sec. 13, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 in (1), in first sentence after "erect one or more", inserted "safe", after "for the transfer of" deleted "livestock, grain, and other", after "commodities" deleted "from wagons or otherwise", and after "to cars" deleted "at each and every station or siding designated in such notice"; in (2), near end of second sentence after "the platform", deleted "if the commission shall upon such examination and hearing deem such platform necessary"; and made minor changes in style.

69-14-802. Repealed. Sec. 2, Ch. 108, L. 1979.

History: En. Sec. 2, Ch. 26, L. 1913; re-en. Sec. 3823, R.C.M. 1921; re-en. Sec. 3823, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-146; amd. Sec. 52, Ch. 43, L. 1979.

69-14-803. Enlargement of platform. The commission shall have power to order an enlargement of such platforms whenever petitioned to that effect and whenever the capacity of such platform is, in its judgment, clearly insufficient for the accommodation of the public.

History: En. Sec. 3, Ch. 26, L. 1913; re-en. Sec. 3824, R.C.M. 1921; re-en. Sec. 3824, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-147.

69-14-804. Erection of scales. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right-of-way, for weighing and shipping purposes.

History: En. Sec. 4, Ch. 26, L. 1913; re-en. Sec. 3825, R.C.M. 1921; re-en. Sec. 3825, R.C.M. 1935; R.C.M. 1947, 72-148.

Cross-References

Systems of weights and measures, 30-12-102.

State standards of weight and measure, 30-12-103.

69-14-805. Violations of loading platform provisions. Every railroad company neglecting or refusing to comply with the requirements of 69-14-801 and 69-14-803 through 69-14-805 shall be deemed guilty of a misdemeanor and be subject to a fine of not less than $500 for every 30 days such failure shall continue after notice as aforesaid.

History: En. Sec. 5, Ch. 26, L. 1913; re-en. Sec. 3826, R.C.M. 1921; re-en. Sec. 3826, R.C.M. 1935; R.C.M. 1947, 72-149; amd. Sec. 130, Ch. 370, L. 1987.

69-14-806 through 69-14-810 reserved.

69-14-811. Industrial and commercial spurs. (1) Except as provided in subsection (2), the commission shall have full power and authority, after notice and hearing, to compel railroad companies operating in the state to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities. Any such industrial or commercial spur shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs.

(2) (a) Any such industrial or commercial spur will not exceed 1 mile in length from headblock to end of track.

(b) Such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards or at sidings unless such stations, yards, sidings, or spurs are more than 7 miles apart or unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main-line operation.

History: En. Sec. 4, Ch. 136, L. 1909; re-en. Sec. 3829, R.C.M. 1921; re-en. Sec. 3829, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-152.

69-14-812. Power of commission with respect to sidetracks, stockyards, and chutes. The commission shall have full power and authority, after notice and hearing, to compel railroads, railways, or common carriers operating within the state to construct or extend public loading or unloading tracks at stations and shall likewise have full power and authority to compel the construction or extension of stockyards, stockchutes, or stockpens whenever the necessity therefor has been established to the satisfaction of the commission.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R.C.M. 1921; re-en. Sec. 3837, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 1, Ch. 464, L. 1975; R.C.M. 1947, 72-159(part).

69-14-813. Removal of sidetrack, spur track, or loading facility. (1) Where a sidetrack, spur track, or loading and unloading facility has been constructed for and used exclusively by a single shipper or industry and is not used by the public and the individual shipper or industry requests that such track or facility be removed from its property, then such removal may be made by giving notice of such request for removal to the commission and without necessity for approval of such removal.

(2) In the event such sidetrack, spur track or stock facility formerly used by the public has not been used by the public for loading or unloading rail shipments for a period of 5 years and proof thereof is established by affidavit of a railroad officer having knowledge thereof, then such installation or facility may be removed after the railroad involved has given 90 days' notice to the public service commission and to the consumer counsel unless the commission, within the 90-day period, notifies the railroad that such removal may not be made until approval by the commission. In which case, the commission shall set a public hearing, within 90 days of such notice to the railroad, to determine whether public convenience and necessity requires the continued maintenance of such installation or facility.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R.C.M. 1921; re-en. Sec. 3837, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 1, Ch. 464, L. 1975; R.C.M. 1947, 72-159(part).

69-14-814. Violations of sidetrack, spur track, or loading facility provisions. Any railroad, railway company, or common carrier and its officers or agents who shall refuse or fail to comply with the provisions of 69-14-812 or 69-14-813 or any order or rule relative thereto made by the commission shall be subject to a fine of not less than $25 or more than $50. Each day of such refusal or failure shall be deemed a separate offense and shall be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the commission in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-163(part).

Cross-References

Violations — general provision, 69-14-137.

Part 9

Grain and Commodity Storage and Transportation

69-14-901. Authorization to locate and erect grain warehouse or elevator on railroad right-of-way. (1) Any person, firm, or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment, or storage of grain (including flaxseed) for the public for hire may make application in writing, containing a description of that portion of the right-of-way of said railroad on which such person, firm, or corporation desires to erect a warehouse or elevator, the size and capacity of the warehouse or elevator proposed to be erected, and the time for which it is desired to maintain such warehouse or elevator, to the person, firm, or corporation owning, leasing, or operating the railroad at such station or siding, for the right, privilege, and easement of erecting and maintaining for the time stated in such application and for reasonable compensation for such warehouse or elevator, as aforesaid, upon the right-of-way pertaining to such railway at such siding or station and within and between the outside switches of the yard of such railway station or siding, and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege, and easement aforesaid, shall absolutely and unconditionally be entitled to the same.

(2) The application shall also state the amount the applicant deems reasonable compensation for the right, privilege, and easement he desires to acquire, and said applicant shall tender and pay to such person, firm, or corporation from whom such easement is sought the sum stated in such application.

(3) If the person, firm, or corporation owning, leasing, or operating the railroad is not willing that the portion of the right-of-way selected by the applicant should be appropriated for such purpose and the parties cannot agree as to the quantity and location of the land upon which such grain warehouse or grain elevator shall be erected, the matter shall be determined by the district court in the same manner and by the same proceeding for determining the amount of compensation to be paid where the parties cannot agree as to the amount.

History: (1), (3)En. Sec. 1, Ch. 43, L. 1913; re-en. Sec. 6638, R.C.M. 1921; re-en. Sec. 6638, R.C.M. 1935; Sec. 88-201, R.C.M. 1947; (2)En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; Sec. 88-202, R.C.M. 1947; R.C.M. 1947, 88-201, 88-202(part).

Cross-References

Easements, Title 70, ch. 17, part 1.

Warehouse operators of agricultural commodities, Title 80, ch. 4, part 5.

69-14-902. Decision on application by railroad. It shall be the duty of any person, firm, or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of 69-14-901 through 69-14-911, within 30 days after the receipt of such application, to notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege, and easement sought to be acquired. In case such person, firm, or corporation fails to notify the applicant within said 30 days, such person, firm, or corporation shall be deemed to have accepted said amount, and upon the payment or tender thereof, said applicant shall be deemed to have acquired the right, privilege, and easement applied for.

History: En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; R.C.M. 1947, 88-202(part).

69-14-903. Court action to resolve differences. (1) In case the amount so named in the application and tendered is not accepted and the parties cannot agree on the amount to be paid for such right, privilege, and easement, the same shall be ascertained, assessed, and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege, and easement sought is situated. The court is hereby given full jurisdiction in the premises and shall at all times be deemed open and in session for the purposes of 69-14-901 through 69-14-911.

(2) Proceedings in the district court shall be instituted and carried on as provided in 69-14-904.

History: (1)En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; Sec. 88-202, R.C.M. 1947; (2)En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; Sec. 88-203, R.C.M. 1947; R.C.M. 1947, 88-202(part), 88-203(part).

69-14-904. Procedure in district court. (1) The parties seeking the right, privilege, and easement aforesaid shall present to and file with the district court a petition in writing and under oath, specifying and describing the right, privilege, and easement sought, the time for which the same is sought, and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor.

(2) A copy of the application for such privilege shall be attached to said petition, and thereupon it shall be at once the duty of the court by its order in writing to fix a time not more than 30 days thereafter within which the person, firm, or corporation so owning, managing, or controlling such railroad shall appear and join issue in said proceeding. Such notice shall be served as a summons is served in civil actions and shall be ample notice to the parties so served to appear and join in the proceedings and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceeding.

(3) The manner of joining issue and the procedure at the trial shall be the same as that in any other civil action at law.

(4) The trial of such issue shall be expedited by the court as much as possible. At the trial the court or jury, as the case may be, shall find and assess the compensation, both in the form of an annual rental and in the form of a gross sum, for the right, privilege, and easement sought. Immediately after the finding or verdict has been made, the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found. In case such election is not made by said party, then the other party to the proceedings may make such election. After election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege, and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid and for the time therein

specified. Thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege, and easement aforesaid.

History: En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; R.C.M. 1947, 88-203(part).

Cross-References

Contents of writ of execution, Title 25, ch. 13, part 3.

Service of summons, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Easements, Title 70, ch. 17, part 1.

69-14-905. Right to supreme court review. Within 30 days after the entry of said judgment, as hereinbefore provided, but not later, an appeal may be taken by either party to the supreme court. Such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege, and easement asked for by the petition and conferred by the judgment if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Either party may appeal from that part of the judgment determining the quantity and location of the land upon which such warehouse or elevator is to be erected, and in the event of such appeal, the judgment shall be suspended pending the appeal.

History: En. Sec. 4, Ch. 43, L. 1913; re-en. Sec. 6641, R.C.M. 1921; re-en. Sec. 6641, R.C.M. 1935; R.C.M. 1947, 88-204(part).

Cross-References

Stay of judgment or order pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

69-14-906. Payment of court costs. Costs and disbursements, as in civil actions, in each court shall be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party. If the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party.

History: En. Sec. 4, Ch. 43, L. 1913; re-en. Sec. 6641, R.C.M. 1921; re-en. Sec. 6641, R.C.M. 1935; R.C.M. 1947, 88-204(part).

Cross-References

Costs, Title 25, ch. 10.

69-14-907. Elevators and warehouses considered public. All elevators and warehouses erected and maintained under the provisions of 69-14-901 through 69-14-911 shall be deemed public elevators and public warehouses and shall be subject to legislative control.

History: En. Sec. 5, Ch. 43, L. 1913; re-en. Sec. 6642, R.C.M. 1921; re-en. Sec. 6642, R.C.M. 1935; R.C.M. 1947, 88-205.

Cross-References

Warehouse operators of agricultural commodities, Title 80, ch. 4, part 5.

69-14-908. Prompt payment of rental required. In case the annual rental is elected, the same shall be paid yearly in advance, and if not so paid after 30 days' default, the right, privilege, and easement aforesaid shall be absolutely forfeited.

History: **En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; R.C.M. 1947, 88-203(part).**

69-14-909. Time limit for construction of elevator or warehouse. Any person, firm, or corporation availing itself of the provisions of 69-14-901 through 69-14-911 shall, within 60 days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court, commence the erection of the warehouse or elevator mentioned in the application and complete the same within 90 days thereafter. In case of failure to comply with the provisions of this section, such person or persons shall be deemed to have abandoned the right acquired, and the part or portion of the railroad right-of-way described in the application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of 69-14-901 through 69-14-911.

History: **En. Sec. 6, Ch. 43, L. 1913; re-en. Sec. 6643, R.C.M. 1921; re-en. Sec. 6643, R.C.M. 1935; R.C.M. 1947, 88-206.**

69-14-910. Connection of railroad to elevator or warehouse. (1) Every railroad company or corporation organized under the laws of this state or doing business therein shall, upon application in writing, provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right-of-way at stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator, without reference to its size, cost, or capacity, where grain is or may be stored. Such railroad company shall not be required to construct or furnish any sidetracks except upon its own land or right-of-way. The reasonable cost of the construction of such sidetracks and connections, except the cost of the rails and fastenings, shall be paid by the person or persons for whose benefit such sidetracks are provided or connections made.

(2) Where stations are 10 miles or more apart, the railroad company, when required to do so by the public service commission, shall construct and maintain a sidetrack for the use of shippers between such stations.

History: **En. Sec. 7, Ch. 43, L. 1913; re-en. Sec. 6644, R.C.M. 1921; re-en. Sec. 6644, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 88-207(part).**

69-14-911. Location of facility. Such elevators and warehouses shall not be constructed within 100 feet of any existing structure and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road.

History: **En. Sec. 7, Ch. 43, L. 1913; re-en. Sec. 6644, R.C.M. 1921; re-en. Sec. 6644, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 88-207(part).**

69-14-912 through 69-14-920 reserved.

69-14-921. Suitable cars to be furnished for shipment of grain and other commodities in bulk. (1) All cars furnished by railroad or railway companies for the transportation of grain or other commodities in bulk must be constructed to prevent leakage when such commodities are placed or hauled in the cars. It is the duty of all railroad or railway companies to furnish cars in the required condition.

(2) Whenever cars placed for loading grain or other commodities in bulk are found to be in a condition that will not afford safe transportation for

commodities, the railroad or railway company shall, upon written complaint to the agent or other person in authority by the shipper or the shipper's representative who proposes to load the car or cars and within 24 hours, cause the car or cars to be properly cleaned and put in repair to allow safe transportation for the commodity to be shipped.

History: (1)En. Sec. 1, Ch. 52, L. 1917; re-en. Sec. 6613, R.C.M. 1921; re-en. Sec. 6613, R.C.M. 1935; Sec. 72-656, R.C.M. 1947; (2)En. Sec. 2, Ch. 52, L. 1917; re-en. Sec. 6614, R.C.M. 1921; re-en. Sec. 6614, R.C.M. 1935; Sec. 72-657, R.C.M. 1947; R.C.M. 1947, 72-656, 72-657; amd. Sec. 14, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 in (1), near beginning of first sentence, and in (2), near beginning, substituted "cars" for "boxcars"; in (2), near end after "properly cleaned", deleted "and coopered"; and made minor changes in style.

Cross-References

Carriers of property, Title 69, ch. 11, part 4.

69-14-922. Action by shipper to render cars suitable. (1) If a railroad or railway company fails within 24 hours after written complaint has been made by the shipper or the shipper's representative to clean and prepare a car or cars, then the shipper or the shipper's representative may properly and safely clean and prepare the car or cars. Preparing a car or cars may not include repairs covered in 49 CFR, parts 200 through 399. The railroad or railway company shall pay for the labor expended in the cleaning or preparation and the actual cost of material used.

(2) If a car or cars are placed at a station or siding where there is no representative of the railroad or railway company upon whom complaint may be served, then the shipper or the shipper's representative may at once clean and repair the cars and must be paid for the labor and material expended, as provided in subsection (1).

History: (1)En. Sec. 3, Ch. 52, L. 1917; re-en. Sec. 6615, R.C.M. 1921; re-en. Sec. 6615, R.C.M. 1935; Sec. 72-658, R.C.M. 1947; (2)En. Sec. 4, Ch. 52, L. 1917; re-en. Sec. 6616, R.C.M. 1921; re-en. Sec. 6616, R.C.M. 1935; Sec. 72-659, R.C.M. 1947; R.C.M. 1947, 72-658, 72-659; amd. Sec. 15, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 in (1), in first sentence after "clean and", substituted "prepare" for "safely cooper" and at end, after "properly and safely" substituted "clean and prepare" for "cooper and clean", inserted second sentence prohibiting repairs covered in 49 CFR, parts 200 through 399, and in third sentence substituted "cleaning or preparation" for "repairs at the rate of $3 per 8-hour day" and at end, after "material used", deleted "providing that such charge shall in no case exceed $5 for each car so coopered"; and made minor changes in style.

69-14-923. Demurrage not to accrue during repairs. It is further provided that no demurrage shall accrue or be collected for the time elapsing while such car or cars are being repaired or cleaned or coopered in accordance herewith.

History: En. Sec. 5, Ch. 52, L. 1917; re-en. Sec. 6617, R.C.M. 1921; re-en. Sec. 6617, R.C.M. 1935; R.C.M. 1947, 72-660.

69-14-924. Liability of railroad for repairs. Any person making the repairs upon or cleaning or coopering the cars of any railroad or railway company as herein provided may recover the amounts expended therefor in an action at law upon the refusal of the railroad or railway company to reimburse him.

History: En. Sec. 6, Ch. 52, L. 1917; re-en. Sec. 6618, R.C.M. 1921; re-en. Sec. 6618, R.C.M. 1935; R.C.M. 1947, 72-661.

69-14-925. Enforcement of provisions related to suitable cars for commodity shipments. It is hereby made the duty of the commission to enforce the provisions of 69-14-921 through 69-14-924.

History: En. Sec. 7, Ch. 52, L. 1917; re-en. Sec. 6619, R.C.M. 1921; re-en. Sec. 6619, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-662.

69-14-926 through 69-14-930 reserved.

69-14-931. Definitions. As used in 69-14-932 and this section, the following definitions apply:

(1) "Fair market value" means:

(a) the price negotiated between the parties under 69-14-932; or

(b) the appraised value as determined by a certified appraisal under 69-14-932.

(2) "Leaseholder" means a person who holds a lease or permit with respect to land adjacent to a railroad right-of-way and who has constructed or owns buildings on the land that have an appraised value of $5,000 or more.

(3) "Right-of-way" means land upon which a railroad has or has had tracks.

History: En. Sec. 1, Ch. 814, L. 1991.

69-14-932. First right to purchase or match offer — lease preference — negotiation process — exception. (1) A person or entity that has a leasehold site between a point 8.5 feet from the centerline of the track nearest the edge of the right-of-way and 300 feet from the track centerline and that uses the leasehold for transporting grain, seed, or related agricultural input commodities, regardless of the status of train operations, has a right of first refusal to purchase the land in the event the owner seeks to sell the land or transfer the leasehold estate.

(2) The leaseholder of a leasehold site described in subsection (1) must be given the opportunity to match a competing lease offer upon expiration of an existing lease. If the leaseholder matches the new lease offer, the lease must be given to the leaseholder. When a person other than the current leaseholder becomes the lessee of a leasehold site described in subsection (1) or the lease is terminated by the lessor for reasons other than nonpayment or other material breach of the lease, the lessor or new lessee shall compensate the former leaseholder for the fair market value of improvements made by the former leaseholder.

(3) The owner of the land may not sell or offer for sale an interest in the leased land or dispossess the leaseholder for reasons other than nonpayment or other material breach of the lease unless he first extends to the leaseholder a written offer to sell the leased land to the leaseholder at fair market value. The leaseholder shall respond to the offer within 60 days of receipt of the offer.

(4) The owner shall negotiate in good faith with the leaseholder for a period not to exceed 90 days following the leaseholder's response to the written offer provided for in subsection (3). The land may not be sold or transferred during the response and negotiation periods.

(5) (a) If the owner and the leaseholder cannot agree on the fair market value, they shall appoint a certified appraiser to establish the fair market value.

(b) In the event that the owner and leaseholder cannot agree on an appraiser, each shall appoint a certified appraiser who shall make an independent appraisal. If the appraisals are within 5% of each other, the average of the two appraisals must constitute the fair market value.

(c) If the two appraisals differ by more than 5%, the two appraisers must appoint a third certified appraiser whose appraisal must establish the fair market value.

(d) If the leaseholder fails to close the purchase of the leasehold estate for any reason within 45 days after the fair market value of the land has been established by the appraisal process provided for in this section, the right of first refusal is extinguished and the owner is free to transfer the property to a person or entity other than the leaseholder.

(e) The owner may transfer a title under this section by quitclaim deed rather than warranty deed.

(6) This section does not apply to the sale of an entire operating railroad line by one operating railroad to another entity for the purpose of operating a railroad.

History: En. Sec. 2, Ch. 814, L. 1991.

Part 10
Railroad Personnel

Part Cross-References

Licensure of plumbing work in railroad not required, 37-69-102.

Limitation of hours worked in tunnel, 39-4-103.

Workers' compensation not applicable to certain railroad workers, 39-71-401.

Penalty for derailment of railroad cars, 45-8-113.

Penalty for abandonment of animal on railroad, 45-8-211.

Deaf and blind persons to be given equal accommodations, 49-4-211.

69-14-1001. Protection of employees affected by closure, consolidation, or centralization of station or other facility. (1) Whenever any railroad, as defined in 69-14-101, is granted the authority to close, consolidate, or centralize a railroad station or facility by order of the commission, the commission shall require employee protection. Before the commission may approve closure, consolidation, or centralization of a station or facility, it shall require from the railroad an agreement to protect each employee affected by the closure, consolidation, or centralization by providing a job at least equal in nature and pay to the job held by the employee for the 6 months prior to the closure, consolidation, or centralization or, if such job does not exist, compensation pay equal to that rate held by the employee 6 months prior to closure, consolidation, or centralization. The equal job and pay agreement must be in effect for a period of 4 years or, in the alternative, the number of years the employee has been employed prior to closure, consolidation, or centralization, whichever is shorter.

(2) Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees.

History: En. Sec. 1, Ch. 377, L. 1973; R.C.M. 1947, 72-169; amd. Sec. 53, Ch. 43, L. 1979; amd. Sec. 1, Ch. 436, L. 1983.

69-14-1002. Compensation of employees on removal of railroad division point or terminal. (1) Except as provided in subsection (2), when any railroad or railway company operating its line of road in, into, or through the state shall move any of its division points or terminals, it shall be liable to any employee of such railroad or railway company for any damage sustained by such employee by reason of any decrease in value of any real property actually occupied by such employee as his place of residence, which decrease in value shall be caused by reason of the removal of such division point or terminal; provided, such employee shall have in such property so damaged an estate of freehold. Such damages shall be collectible in any court of competent jurisdiction.

(2) When any railroad or railway company in good faith determines upon a change or removal of any division point or terminal and in good faith posts prominently about its station house, shops, and yards a statement of its intention to do so, in such manner as to give reasonable notice thereof to such employee, it shall not be liable, as hereinbefore provided, for any decrease in value of any interest in any property purchased after the time of such posting provided that such division point or terminal shall be changed or removed within 6 months after the date of such posting.

History: (1)En. Sec. 1, Ch. 159, L. 1921; re-en. Sec. 6623, R.C.M. 1921; re-en. Sec. 6623, R.C.M. 1935; Sec. 72-666, R.C.M. 1947; (2)En. Sec. 2, Ch. 159, L. 1921; re-en. Sec. 6624, R.C.M. 1921; re-en. Sec. 6624, R.C.M. 1935; Sec. 72-667, R.C.M. 1947; R.C.M. 1947, 72-666, 72-667.

69-14-1003. Railroad personnel as law officers. Every conductor, engineer, or other person in charge of the operation of cars, trains, or locomotives upon any railroad is, while so engaged or employed, constituted a public executive officer of the class of peace officers and of the grade of constable in each county wherein his train, cars, or locomotives may from time to time happen to be and has the same authority as other peace officers to, with or without a warrant, arrest and prosecute persons trespassing or illegally obtaining passage on the railroad. The railroad personnel mentioned herein shall not be entitled to receive fees for any arrest or prosecution which may be made or prosecuted under this section. None of the railroad personnel herein named shall be authorized to hold said office or exercise its functions unless at the time they are citizens of the United States and have been citizens of this state for at least 1 year preceding their exercising the functions thereof.

History: En. Sec. 3, p. 150, L. 1899; re-en. Sec. 8884, Rev. C. 1907; re-en. Sec. 11570, R.C.M. 1921; re-en. Sec. 11570, R.C.M. 1935; Sec. 94-35-203, R.C.M. 1947; redes. 72-672 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 72-672; amd. Sec. 54, Ch. 43, L. 1979.

Cross-References

Railroad corporation special peace officers, Title 44, ch. 4, part 9.

69-14-1004. Penalty for being under the influence while engaged in train operations. A person who is under the influence, as provided in 49 CFR 383.51, of alcohol or a drug while in charge of a locomotive engine while as conductor or driver upon any railroad car or train or while acting as train dispatcher or as telegraph operator receiving or transmitting dispatches in relation to the movement of trains is guilty of a misdemeanor.

History: En. Sec. 690, Pen. C. 1895; re-en. Sec. 8521, Rev. C. 1907; re-en. Sec. 11253, R.C.M. 1921; Cal. Pen. C. Sec. 391; re-en. Sec. 11253, R.C.M. 1935; Sec. 94-35-109, R.C.M.

1947; redes. 72-671 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 72-671; amd. Sec. 16, Ch. 235, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 235 near beginning substituted "under the influence, as provided in 49 CFR 383.51, of alcohol or a drug" for "intoxicated" and after "car or train" deleted "whether propelled by steam or otherwise"; and made minor changes in style.

Cross-References

Penalty for misdemeanor, 46-18-212.

69-14-1005. Medical aid for injured trainmen. (1) In case any railroad trainman or employee of any railroad doing business in this state shall be injured during his regular course of employment, any employee of said railroad is hereby empowered and authorized to call upon and retain the services of the nearest practicing physician or surgeon to care for and treat any such injured trainman or employee, during and until such time as one of the regularly employed and paid physicians or surgeons of such railroad corporation is able to render such service.

(2) In cases where the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad corporation are retained and hired, as provided in this section, such physician or surgeon shall be compensated and paid a reasonable fee for such services performed by him.

(3) If any railroad corporation refuses or neglects to pay for the services of any such physician as hereinbefore provided for within a reasonable time after such physician or surgeon has rendered the services therefor, such railroad corporation shall be guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 95, L. 1909; amd. Sec. 1, Ch. 45, L. 1921; re-en. Sec. 6602, R.C.M. 1921; re-en. Sec. 6602, R.C.M. 1935; Sec. 72-645, R.C.M. 1947; (2)En. Sec. 2, Ch. 95, L. 1909; re-en. Sec. 6603, R.C.M. 1921; re-en. Sec. 6603, R.C.M. 1935; Sec. 72-646, R.C.M. 1947; (3)En. Sec. 3, Ch. 95, L. 1909; re-en. Sec. 6604, R.C.M. 1921; re-en. Sec. 6604, R.C.M. 1935; Sec. 72-647, R.C.M. 1947; R.C.M. 1947, 72-645, 72-646, 72-647.

Cross-References

Good Samaritan law, 27-1-714.

Consent to emergency treatment, 41-1-405.

69-14-1006. Liability for death or injury to railroad employees. (1) Every person or corporation operating a railroad in this state shall be liable in damages to any person suffering injury while he is employed by such person or corporation so operating any such railroad or, in case of the death of such employee, instantaneously or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee and, if none, then of such employee's parents and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such person or corporation so operating such railroad, in or about the handling, movement, or operation of any train, engine, or car on or over such railroad or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(2) (a) In all actions brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this section, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to

have been guilty of contributory negligence in any case where the violation by such person or corporation, so operating such railroad, of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(b) An employee of any such person or corporation so operating such railroad shall not be deemed to have assumed any risk incident to his employment when such risk arises by reason of the negligence of his employer or of any person in the service of such employer.

(3) Any contract, rule, or device whatsoever, the purpose or intent of which shall be to enable any such person or corporation so operating such railroad to exempt itself from any liability created by this section, shall, to that extent, be void. In any action brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this section, such person or corporation may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action is brought.

History: (1)En. Sec. 1, Ch. 29, L. 1911; re-en. Sec. 6605, R.C.M. 1921; re-en. Sec. 6605, R.C.M. 1935; Sec. 72-648, R.C.M. 1947; (2)(a)En. Sec. 2, Ch. 29, L. 1911; re-en. Sec. 6606, R.C.M. 1921; re-en. Sec. 6606, R.C.M. 1935; Sec. 72-649, R.C.M. 1947; (2)(b)En. Sec. 3, Ch. 29, L. 1911; re-en. Sec. 6607, R.C.M. 1921; re-en. Sec. 6607, R.C.M. 1935; Sec. 72-650, R.C.M. 1947; (3)En. Sec. 4, Ch. 29, L. 1911; re-en. Sec. 6608, R.C.M. 1921; re-en. Sec. 6608, R.C.M. 1935; Sec. 72-651, R.C.M. 1947; R.C.M. 1947, 72-648, 72-649, 72-650, 72-651.

Cross-References

Comparative negligence — extent to which contributory negligence bars recovery, 27-1-702.

Part 11

Sale or Transfer of Railroad Line

69-14-1101. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means a person, corporation, association, business entity, labor organization, the state of Montana or any of its political subdivisions, or any other entity that acquires a line of railroad, by purchase, lease, or other agreement, to continue the commercial transportation of goods or passengers.

(2) "Labor organization" means any organization or association of any kind in which employees participate and that exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(3) "Seller" means a person, corporation, association, or business entity that transfers a line of railroad by sale, lease, or other agreement.

(4) "Transaction" means the limited purchase, sale, or transfer of part of a line of railroad that will be operated by a common rail carrier.

History: En. Sec. 1, Ch. 653, L. 1987.

69-14-1102. Conditions for transfer of line of railroad. Thirty days prior to filing with the interstate commerce commission of an application to purchase, sell, or transfer any section of a line of railroad, the seller and buyer shall:

(1) file a notice of intent and other information, as described in 69-14-1103, with the attorney general and the commission; and

(2) require representatives to attend meetings, upon reasonable notice, with the attorney general and the commission to respond to questions and requests for information on the proposed transaction directly related to the requirements of 69-14-1103.

History: En. Sec. 2, Ch. 653, L. 1987.

69-14-1103. Notice of intent. (1) The notice of intent filed in accordance with 69-14-1102 must contain:

(a) a complete and accurate description of the identities of the buyer and seller; and

(b) a thorough description of the railroad line to be transferred.

(2) A general description of the terms of the proposed transaction and any labor agreements must be attached to the notice of intent.

History: En. Sec. 3, Ch. 653, L. 1987.

TITLE 70

PROPERTY

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Recreational use of streams, Title 23, ch. 2, part 3.

CHAPTER 1

PROPERTY IN GENERAL REAL AND PERSONAL

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70-1-101. Property defined — ownership.
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Part 1
General Provisions

70-1-101. Property defined — ownership. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

History: En. Sec. 1070, Civ. C. 1895; re-en. Sec. 4421, Rev. C. 1907; re-en. Sec. 6663, R.C.M. 1921; Cal. Civ. C. Sec. 654; Field Civ. C. Sec. 159; re-en. Sec. 6663, R.C.M. 1935; R.C.M. 1947, 67-201.

Cross-References

Real estate defined, 37-51-102.

70-1-102. Ownership public or private — state as private proprietor. All property has an owner, whether that owner is the state and the property public or the owner an individual and the property private. The state may also hold property as a private proprietor.

History: En. Sec. 1090, Civ. C. 1895; re-en. Sec. 4431, Rev. C. 1907; re-en. Sec. 6673, R.C.M. 1921; Cal. Civ. C. Sec. 669; Field Civ. C. Sec. 168; re-en. Sec. 6673, R.C.M. 1935; R.C.M. 1947, 67-301.

Cross-References

General rights of state over property, Title 70, ch. 1, part 2.

State Lands, Title 77.

70-1-103. Owner entitled to products and accessions. The owner of a thing also owns all of its products and accessions.

History: En. Sec. 1170, Civ. C. 1895; re-en. Sec. 4472, Rev. C. 1907; re-en. Sec. 6714, R.C.M. 1921; Cal. Civ. C. Sec. 732; Field Civ. C. Sec. 209; re-en. Sec. 6714, R.C.M. 1935; R.C.M. 1947, 67-415.

Cross-References

Seizures of property related to controlled substances, Title 44, ch. 12.

Property — acquired by accession, 70-1-110.

Accession and intermixture of personal property, Title 70, ch. 4.

Increase of thing during period of loan, 70-7-103.

Increase of thing loaned for exchange, 70-7-203.

70-1-104. In what things property interests may exist. There may be ownership of:

(1) all inanimate things which are capable of appropriation or of manual delivery;

(2) all domestic animals;

(3) all obligations;

(4) such products of labor or skill as the composition of an author, the goodwill of a business, trademarks, and signs; and

(5) rights created or granted by statute.

History: En. Sec. 1071, Civ. C. 1895; re-en. Sec. 4422, Rev. C. 1907; re-en. Sec. 6664, R.C.M. 1921; Cal. Civ. C. Sec. 655; Field Civ. C. Sec. 160; re-en. Sec. 6664, R.C.M. 1935; R.C.M. 1947, 67-202.

Cross-References

Seizures of property related to controlled substances, Title 44, ch. 12.

Prohibition of possession of wild animals — exceptions, 50-23-102.

70-1-105. Real or personal. Property is either:

(1) real or immovable; or

(2) personal or movable.

History: En. Sec. 1073, Civ. C. 1895; re-en. Sec. 4424, Rev. C. 1907; re-en. Sec. 6666, R.C.M. 1921; Cal. Civ. C. Sec. 657; Field Civ. C. Sec. 162; re-en. Sec. 6666, R.C.M. 1935; R.C.M. 1947, 67-206.

70-1-106. Real property defined. Real or immovable property consists of:

(1) land;

(2) that which is affixed to land;

(3) that which is incidental or appurtenant to land;

(4) that which is immovable by law.

History: En. Sec. 1074, Civ. C. 1895; re-en. Sec. 4425, Rev. C. 1907; re-en. Sec. 6667, R.C.M. 1921; Cal. Civ. C. Sec. 658; Based on Field Civ. C. Sec. 163; re-en. Sec. 6667, R.C.M. 1935; R.C.M. 1947, 67-207.

70-1-107. Choice of law as to real property. Real property within this state is governed by the law of this state, except where the title is in the United States.

History: En. Sec. 1200, Civ. C. 1895; re-en. Sec. 4480, Rev. C. 1907; re-en. Sec. 6722, R.C.M. 1921; Cal. Civ. C. Sec. 755; re-en. Sec. 6722, R.C.M. 1935; R.C.M. 1947, 67-501.

70-1-108. Personal property defined. Every kind of property that is not real is personal.

History: En. Sec. 1079, Civ. C. 1895; re-en. Sec. 4430, Rev. C. 1907; re-en. Sec. 6672, R.C.M. 1921; Cal. Civ. C. Sec. 663; Field Civ. C. Sec. 167; re-en. Sec. 6672, R.C.M. 1935; R.C.M. 1947, 67-212.

70-1-109. Choice of law as to personal property. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner and is governed by the law of his domicile.

History: En. Sec. 1340, Civ. C. 1895; re-en. Sec. 4556, Rev. C. 1907; re-en. Sec. 6803, R.C.M. 1921; Cal. Civ. C. Sec. 946; Field Civ. C. Sec. 364; re-en. Sec. 6803, R.C.M. 1935; R.C.M. 1947, 67-1101.

70-1-110. How property acquired. Property is acquired by:

(1) occupancy;
(2) accession;
(3) transfer;
(4) will; or
(5) succession.

History: En. Sec. 1380, Civ. C. 1895; re-en. Sec. 4569, Rev. C. 1907; re-en. Sec. 6816, R.C.M. 1921; Cal. Civ. C. Sec. 1000; re-en. Sec. 6816, R.C.M. 1935; R.C.M. 1947, 67-1201.

Cross-References

Uniform Probate Code — intestacy, wills, and donative transfers, Title 72, ch. 2.

Part 2

General Rights of State Over Property

70-1-201. Original and ultimate title. The original and ultimate right of all property, real and personal, within the jurisdiction of this state and not belonging to the United States is in the people of the state.

History: En. Sec. 60, Pol. C. 1895; re-en. Sec. 26, Rev. C. 1907; re-en. Sec. 27, R.C.M. 1921; Cal. Pol. C. Sec. 40; re-en. Sec. 27, R.C.M. 1935; R.C.M. 1947, 67-101.

70-1-202. Property of the state — what included. The state is the owner of:

(1) all land below the water of a navigable lake or stream;
(2) all property lawfully appropriated by it to its own use;
(3) all property dedicated or granted to the state; and
(4) all property of which there is no other owner.

History: En. Sec. 1091, Civ. C. 1895; re-en. Sec. 4432, Rev. C. 1907; re-en. Sec. 6674, R.C.M. 1921; Cal. Civ. C. Sec. 670; Based on Field Civ. C. Sec. 169; re-en. Sec. 6674, R.C.M. 1935; R.C.M. 1947, 67-302.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Public land trust — disposition, Art. X, sec. 11, Mont. Const.

State Lands, Title 77.

Ownership records of state-owned land, Title 77, ch. 1, part 7.

70-1-203. Escheat. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state. All property within the limits of this state which does not belong to any person belongs to the state.

History: En. Sec. 61, Pol. C. 1895; re-en. Sec. 27, Rev. C. 1907; re-en. Sec. 28, R.C.M. 1921; Cal. Pol. C. Sec. 41; re-en. Sec. 28, R.C.M. 1935; R.C.M. 1947, 67-102.

Cross-References

Disposition of unclaimed funds from liquidated bank, 32-1-537.

Escheated estates, Title 72, ch. 14.

70-1-204. Acquisition by taxation. The state or any county thereof may acquire property by taxation in the modes authorized by law.

History: En. Sec. 62, Pol. C. 1895; re-en. Sec. 28, Rev. C. 1907; re-en. Sec. 29, R.C.M. 1921; Cal. Pol. C. Sec. 43; re-en. Sec. 29, R.C.M. 1935; R.C.M. 1947, 67-103.

Cross-References

Tax sales, Title 15, ch. 17.

70-1-205. Eminent domain. The state may acquire or authorize others to acquire title to property, real or personal, for public use, in the cases and in the modes provided in chapter 30 of this title.

History: En. Sec. 63, Pol. C. 1895; re-en. Sec. 29, Rev. C. 1907; re-en. Sec. 30, R.C.M. 1921; Cal. Pol. C. Sec. 44; re-en. Sec. 30, R.C.M. 1935; R.C.M. 1947, 67-104.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.

Part 3
Kinds of Ownership Interests

70-1-301. Interests in real property specially named elsewhere. In respect to real or immovable property, the interests mentioned in this part are denominated estates and are specially named and classified in 70-15-202 through 70-17-111 and in Title 72, chapter 34, part 3.

History: En. Sec. 1122, Civ. C. 1895; re-en. Sec. 4455, Rev. C. 1907; re-en. Sec. 6697, R.C.M. 1921; Cal. Civ. C. Sec. 701; Field Civ. C. Sec. 193; re-en. Sec. 6697, R.C.M. 1935; R.C.M. 1947, 67-327.

70-1-302. Ownership — absolute or qualified. The ownership of property is either:

(1) absolute; or

(2) qualified.

History: En. Sec. 1100, Civ. C. 1895; re-en. Sec. 4433, Rev. C. 1907; re-en. Sec. 6675, R.C.M. 1921; Cal. Civ. C. Sec. 678; Field Civ. C. Sec. 171; re-en. Sec. 6675, R.C.M. 1935; R.C.M. 1947, 67-303.

70-1-303. When ownership absolute. The ownership of property is absolute when a single person has the absolute dominion over it and may use it or dispose of it according to his pleasure, subject only to general laws.

History: En. Sec. 1101, Civ. C. 1895; re-en. Sec. 4434, Rev. C. 1907; re-en. Sec. 6676, R.C.M. 1921; Cal. Civ. C. Sec. 679; Field Civ. C. Sec. 172; re-en. Sec. 6676, R.C.M. 1935; R.C.M. 1947, 67-304.

70-1-304. When ownership qualified. The ownership of property is qualified when:

(1) it is shared with one or more persons;

(2) the time of enjoyment is deferred or limited;

(3) the use is restricted.

History: En. Sec. 1102, Civ. C. 1895; re-en. Sec. 4435, Rev. C. 1907; re-en. Sec. 6677, R.C.M. 1921; Cal. Civ. C. Sec. 680; Field Civ. C. Sec. 173; re-en. Sec. 6677, R.C.M. 1935; R.C.M. 1947, 67-305.

70-1-305. Ownership by single person. The ownership of property by a single person is designated as a sole or several ownership.

History: En. Sec. 1103, Civ. C. 1895; re-en. Sec. 4436, Rev. C. 1907; re-en. Sec. 6678, R.C.M. 1921; Cal. Civ. C. Sec. 681; Field Civ. C. Sec. 174; re-en. Sec. 6678, R.C.M. 1935; R.C.M. 1947, 67-306.

70-1-306. Ownership by several persons — types. The ownership of property by several persons is either of:

(1) joint interests;

(2) partnership interests;

(3) interests in common.

History: En. Sec. 1104, Civ. C. 1895; re-en. Sec. 4437, Rev. C. 1907; re-en. Sec. 6679, R.C.M. 1921; Cal. Civ. C. Sec. 682; Field Civ. C. Sec. 175; re-en. Sec. 6679, R.C.M. 1935; R.C.M. 1947, 67-307.

Cross-References

Husband and wife, Title 40, ch. 2.

Husband and wife as joint tenants, 40-2-105.

Joint tenancy — how created, 70-20-105.

Conveyance in joint tenancy — right of survivorship, 70-20-310.

Partition of real property, Title 70, ch. 29.

70-1-307. Joint interest defined. A joint interest is one owned by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy or when granted or devised to executors or trustees as joint tenants.

History: En. Sec. 1105, Civ. C. 1895; re-en. Sec. 4438, Rev. C. 1907; re-en. Sec. 6680, R.C.M. 1921; Cal. Civ. C. Sec. 683; Based on Field Civ. C. Sec. 176; re-en. Sec. 6680, R.C.M. 1935; R.C.M. 1947, 67-308.

Cross-References

Husband and wife as joint tenants, 40-2-105.

Action for waste — treble damages, 70-16-106.

Dower and curtesy abolished, 72-2-122.

70-1-308. Safe deposit box — joint tenancy. When so specified in the agreement granting for a term of time the right in two or more persons to use or occupy any safe or box, commonly referred to as a safe deposit vault or box for the safekeeping of valuables, such interest and estate created in the grantees shall be a joint tenancy in such vault or box and pass to the survivors and survivor upon the death of one or more of the joint tenants with right in such survivors and survivor to have access to and possession of such vault or box and the contents thereof under the terms of the agreement.

History: En. Sec. 1, Ch. 62, L. 1939; R.C.M. 1947, 67-309.

Cross-References

Building and loan association savings certificates and shares — joint ownership, 32-2-416.

Credit unions — joint accounts, 32-3-505.

70-1-309. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 67-308.1 by Sec. 1, Ch. 75, L. 1977; R.C.M. 1947, 67-308.1.

70-1-310. Action by or against joint tenants or tenants in common. All persons holding as tenants in common, joint tenants, or any number less than all may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party. In all cases one tenant in common or joint tenant can sue his cotenant.

History: En. Sec. 21, p. 43, L. 1877; re-en. Sec. 21, 1st Div. Rev. Stat. 1879; re-en. Sec. 21, 1st Div. Comp. Stat. 1887; amd. Sec. 586, C. Civ. Proc. 1895; re-en. Sec. 6493, Rev. C. 1907; re-en. Sec. 9085, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 384; re-en. Sec. 9085, R.C.M. 1935; R.C.M. 1947, 93-2823.

70-1-311. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 2, p. 454, Bannack Stat.; re-en. Sec. 2, p. 504, Cod. Stat. 1871; re-en. Sec. 771, 5th Div. Rev. Stat. 1879; re-en. Sec. 1285, 5th Div. Comp. Stat. 1887; amd. Sec. 592, C. Civ. Proc. 1895; en. Sec. 1, p. 134, L. 1899; re-en. Sec. 6499, Rev. C. 1907; re-en. Sec. 9091, R.C.M. 1921; re-en. Sec. 9091, R.C.M. 1935; R.C.M. 1947, 93-2829.

70-1-312. Partnership interest defined. A partnership interest is one owned by several persons in partnership for partnership purposes.

History: En. Sec. 1106, Civ. C. 1895; re-en. Sec. 4439, Rev. C. 1907; re-en. Sec. 6681, R.C.M. 1921; Cal. Civ. C. Sec. 684; Field Civ. C. Sec. 177; re-en. Sec. 6681, R.C.M. 1935; R.C.M. 1947, 67-311.

Cross-References

Partnerships, Title 35, ch. 10 through 12.

70-1-313. Interest in common defined. An interest in common is one owned by several persons, not in joint ownership or partnership.

History: **En. Sec. 1107, Civ. C. 1895; re-en. Sec. 4440, Rev. C. 1907; re-en. Sec. 6682, R.C.M. 1921; Cal. Civ. C. Sec. 685; Field Civ. C. Sec. 178; re-en. Sec. 6682, R.C.M. 1935; R.C.M. 1947, 67-312.**

Cross-References

Action by or against joint tenants or tenants in common, 70-1-310.

Action for waste — treble damages, 70-16-106.

Abuse of property held jointly or in common — action — mining property, 70-19-202.

70-1-314. Interest in common — how created. Every interest created in favor of several persons in their own right, including husband and wife, is an interest in common unless acquired by them in partnership for partnership purposes or unless declared in its creation to be a joint interest, as provided in 70-1-307.

History: **En. Sec. 1108, Civ. C. 1895; re-en. Sec. 4441, Rev. C. 1907; re-en. Sec. 6683, R.C.M. 1921; Cal. Civ. C. Sec. 686; Based on Field Civ. C. Sec. 179; re-en. Sec. 6683, R.C.M. 1935; R.C.M. 1947, 67-313.**

Cross-References

Husband and wife as joint tenants, 40-2-105.

Husband and wife — when interests separate, 40-2-201.

Dower and curtesy abolished, 72-2-122.

70-1-315. Interest as to time of enjoyment. In respect to the time of enjoyment, an interest in property is either:

(1) present or future; and

(2) perpetual or limited.

History: **En. Sec. 1109, Civ. C. 1895; re-en. Sec. 4442, Rev. C. 1907; re-en. Sec. 6684, R.C.M. 1921; Cal. Civ. C. Sec. 688; Field Civ. C. Sec. 180; re-en. Sec. 6684, R.C.M. 1935; R.C.M. 1947, 67-314.**

70-1-316. Present interest — to what entitles owner. A present interest entitles the owner to the immediate possession of the property.

History: **En. Sec. 1110, Civ. C. 1895; re-en. Sec. 4443, Rev. C. 1907; re-en. Sec. 6685, R.C.M. 1921; Cal. Civ. C. Sec. 689; Field Civ. C. Sec. 181; re-en. Sec. 6685, R.C.M. 1935; R.C.M. 1947, 67-315.**

70-1-317. Future interest — to what entitles owner. A future interest entitles the owner to the possession of the property only at a future period.

History: **En. Sec. 1111, Civ. C. 1895; re-en. Sec. 4444, Rev. C. 1907; re-en. Sec. 6686, R.C.M. 1921; Cal. Civ. C. Sec. 690; Field Civ. C. Sec. 182; re-en. Sec. 6686, R.C.M. 1935; R.C.M. 1947, 67-316.**

Cross-References

Future estate — right of possession at future day, 70-15-209.

70-1-318. What future interests recognized. No future interest in property is recognized by the law, except such as is defined in this code.

History: **En. Sec. 1124, Civ. C. 1895; re-en. Sec. 4457, Rev. C. 1907; re-en. Sec. 6699, R.C.M. 1921; Cal. Civ. C. Sec. 703; Field Civ. C. Sec. 195; re-en. Sec. 6699, R.C.M. 1935; R.C.M. 1947, 67-329.**

70-1-319. Mere possibility not an interest. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

History: En. Sec. 1121, Civ. C. 1895; re-en. Sec. 4454, Rev. C. 1907; re-en. Sec. 6696, R.C.M. 1921; Cal. Civ. C. Sec. 700; Field Civ. C. Sec. 192; re-en. Sec. 6696, R.C.M. 1935; R.C.M. 1947, 67-326.

70-1-320. Perpetual interest — duration. A perpetual interest has a duration equal to that of the property.

History: En. Sec. 1112, Civ. C. 1895; re-en. Sec. 4445, Rev. C. 1907; re-en. Sec. 6687, R.C.M. 1921; Cal. Civ. C. Sec. 691; Field Civ. C. Sec. 183; re-en. Sec. 6687, R.C.M. 1935; R.C.M. 1947, 67-317.

70-1-321. Limited interest — duration. A limited interest has a duration of less than that of the property.

History: En. Sec. 1113, Civ. C. 1895; re-en. Sec. 4446, Rev. C. 1907; re-en. Sec. 6688, R.C.M. 1921; Cal. Civ. C. Sec. 692; Field Civ. C. Sec. 184; re-en. Sec. 6688, R.C.M. 1935; R.C.M. 1947, 67-318.

70-1-322. Kinds of future interests. A future interest is either:

(1) vested; or

(2) contingent.

History: En. Sec. 1114, Civ. C. 1895; re-en. Sec. 4447, Rev. C. 1907; re-en. Sec. 6689, R.C.M. 1921; Cal. Civ. C. Sec. 693; Field Civ. C. Sec. 185; re-en. Sec. 6689, R.C.M. 1935; R.C.M. 1947, 67-319.

70-1-323. Future interest — when vested. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the intermediate or precedent interest.

History: En. Sec. 1115, Civ. C. 1895; re-en. Sec. 4448, Rev. C. 1907; re-en. Sec. 6690, R.C.M. 1921; Cal. Civ. C. Sec. 694; Field Civ. C. Sec. 186; re-en. Sec. 6690, R.C.M. 1935; R.C.M. 1947, 67-320.

70-1-324. Future interest — when contingent. A future interest is contingent whilst the person in whom or the event upon which it is limited to take effect remains uncertain.

History: En. Sec. 1116, Civ. C. 1895; re-en. Sec. 4449, Rev. C. 1907; re-en. Sec. 6691, R.C.M. 1921; Cal. Civ. C. Sec. 695; Field Civ. C. Sec. 187; re-en. Sec. 6691, R.C.M. 1935; R.C.M. 1947, 67-321.

70-1-325. Two or more alternative future interests. Two or more future interests may be created to take effect in the alternative so that if the first in order fails to vest, the next in succession shall be substituted for it and take effect accordingly.

History: En. Sec. 1117, Civ. C. 1895; re-en. Sec. 4450, Rev. C. 1907; re-en. Sec. 6692, R.C.M. 1921; Cal. Civ. C. Sec. 696; Field Civ. C. Sec. 188; re-en. Sec. 6692, R.C.M. 1935; R.C.M. 1947, 67-322.

70-1-326. Future interests — how passed. Future interests pass by succession, will, and transfer in the same manner as present interests.

History: En. Sec. 1120, Civ. C. 1895; re-en. Sec. 4453, Rev. C. 1907; re-en. Sec. 6695, R.C.M. 1921; Cal. Civ. C. Sec. 699; Field Civ. C. Sec. 191; re-en. Sec. 6695, R.C.M. 1935; R.C.M. 1947, 67-325.

Part 4

Conditions and Limitations of Ownership

Part Cross-References

Trust Code, Title 72, ch. 33 through 36.

70-1-401. Fixing time of enjoyment — computation — condition. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on event. In the latter case, the enjoyment is said to be upon condition.

History: En. Sec. 1140, Civ. C. 1895; re-en. Sec. 4458, Rev. C. 1907; re-en. Sec. 6700, R.C.M. 1921; Cal. Civ. C. Sec. 707; Field Civ. C. Sec. 196; re-en. Sec. 6700, R.C.M. 1935; R.C.M. 1947, 67-401.

70-1-402. Kinds of conditions. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

History: En. Sec. 1141, Civ. C. 1895; re-en. Sec. 4459, Rev. C. 1907; re-en. Sec. 6701, R.C.M. 1921; Cal. Civ. C. Sec. 708; Field Civ. C. Sec. 197; re-en. Sec. 6701, R.C.M. 1935; R.C.M. 1947, 67-402.

Cross-References

Types of conditions — defined, 28-1-402 through 28-1-405.

70-1-403. Condition precedent requiring wrongful act. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

History: En. Sec. 1142, Civ. C. 1895; re-en. Sec. 4460, Rev. C. 1907; re-en. Sec. 6702, R.C.M. 1921; Cal. Civ. C. Sec. 709; Field Civ. C. Sec. 198; re-en. Sec. 6702, R.C.M. 1935; R.C.M. 1947, 67-403.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

70-1-404. Conditions restraining marriage void. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void, but this does not affect limitations where the intent was not to forbid marriage but only to give the use until marriage.

History: En. Sec. 1143, Civ. C. 1895; re-en. Sec. 4461, Rev. C. 1907; re-en. Sec. 6703, R.C.M. 1921; Cal. Civ. C. Sec. 710; Based on Field Civ. C. Sec. 199; re-en. Sec. 6703, R.C.M. 1935; R.C.M. 1947, 67-404.

Cross-References

Contracts in restraint of marriage generally void, 28-2-706.

70-1-405. Conditions restraining alienation void. Conditions restraining alienation, when repugnant to the interest created, are void.

History: En. Sec. 1144, Civ. C. 1895; re-en. Sec. 4462, Rev. C. 1907; re-en. Sec. 6704, R.C.M. 1921; Cal. Civ. C. Sec. 711; Field Civ. C. Sec. 200; re-en. Sec. 6704, R.C.M. 1935; R.C.M. 1947, 67-405.

70-1-406 through 70-1-418. Repealed. Sec. 8, Ch. 250, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

70-1-406. En. Sec. 1150, Civ. C. 1895; re-en. Sec. 4463, Rev. C. 1907; re-en. Sec. 6705, R.C.M. 1921; Cal. Civ. C. Sec. 715; Based on Field Civ. C. Sec. 201; re-en. Sec. 6705, R.C.M. 1935; amd. Sec. 1, Ch. 213, L. 1959; R.C.M. 1947, 67-406(a).

70-1-407. En. Sec. 1151, Civ. C. 1895; re-en. Sec. 4464, Rev. C. 1907; re-en. Sec. 6706, R.C.M. 1921; Cal. Civ. C. Sec. 716; Field Civ. C. Sec. 202; re-en. Sec. 6706, R.C.M. 1935; amd. Sec. 2, Ch. 213, L. 1959; R.C.M. 1947, 67-407(part).

70-1-408. En. Sec. 1150, Civ. C. 1895; re-en. Sec. 4463, Rev. C. 1907; re-en. Sec. 6705, R.C.M. 1921; Cal. Civ. C. Sec. 715; Based on Field Civ. C. Sec. 201; re-en. Sec. 6705, R.C.M. 1935; amd. Sec. 1, Ch. 213, L. 1959; R.C.M. 1947, 67-406(b); amd. Sec. 1, Ch. 338, L. 1979.

70-1-409. En. Sec. 1151, Civ. C. 1895; re-en. Sec. 4464, Rev. C. 1907; re-en. Sec. 6706, R.C.M. 1921; Cal. Civ. C. Sec. 716; Field Civ. C. Sec. 202; re-en. Sec. 6706, R.C.M. 1935; amd. Sec. 2, Ch. 213, L. 1959; R.C.M. 1947, 67-407(part).

70-1-410. En. Sec. 1220, Civ. C. 1895; re-en. Sec. 4491, Rev. C. 1907; re-en. Sec. 6733, R.C.M. 1921; Cal. Civ. C. Sec. 771; Field Civ. C. Sec. 228; re-en. Sec. 6733, R.C.M. 1935; R.C.M. 1947, 67-512.

70-1-411. En. Secs. 1, 2, Ch. 214, L. 1959; R.C.M. 1947, 67-423, 67-424.

70-1-412. En. Sec. 1190, Civ. C. 1895; re-en. Sec. 4478, Rev. C. 1907; re-en. Sec. 6720, R.C.M. 1921; Cal. Civ. C. Sec. 748; Field Civ. C. Sec. 215; re-en. Sec. 6720, R.C.M. 1935; R.C.M. 1947, 67-421.

70-1-413. En. Sec. 1160, Civ. C. 1895; re-en. Sec. 4467, Rev. C. 1907; re-en. Sec. 6709, R.C.M. 1921; Cal. Civ. C. Sec. 722; Field Civ. C. Sec. 204; re-en. Sec. 6709, R.C.M. 1935; R.C.M. 1947, 67-410.

70-1-414. En. Sec. 1161, Civ. C. 1895; re-en. Sec. 4468, Rev. C. 1907; re-en. Sec. 6710, R.C.M. 1921; Cal. Civ. C. Sec. 723; Field Civ. C. Sec. 205; re-en. Sec. 6710, R.C.M. 1935; R.C.M. 1947, 67-411.

70-1-415. En. Sec. 1162, Civ. C. 1895; re-en. Sec. 4469, Rev. C. 1907; re-en. Sec. 6711, R.C.M. 1921; Cal. Civ. C. Sec. 724; Field Civ. C. Sec. 206; re-en. Sec. 6711, R.C.M. 1935; amd. Sec. 1, Ch. 212, L. 1939; R.C.M. 1947, 67-412.

70-1-416. En. Sec. 1163, Civ. C. 1895; re-en. Sec. 4470, Rev. C. 1907; re-en. Sec. 6712, R.C.M. 1921; Cal. Civ. C. Sec. 725; Field Civ. C. Sec. 207; re-en. Sec. 6712, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1957; R.C.M. 1947, 67-413.

70-1-417. En. Sec. 1164, Civ. C. 1895; re-en. Sec. 4471, Rev. C. 1907; re-en. Sec. 6713, R.C.M. 1921; Cal. Civ. C. Sec. 726; Field Civ. C. Sec. 208; re-en. Sec. 6713, R.C.M. 1935; amd. Sec. 2, Ch. 212, L. 1939; R.C.M. 1947, 67-414.

70-1-418. En. Sec. 1171, Civ. C. 1895; re-en. Sec. 4473, Rev. C. 1907; re-en. Sec. 6715, R.C.M. 1921; Cal. Civ. C. Sec. 733; Field Civ. C. Sec. 210; re-en. Sec. 6715, R.C.M. 1935; R.C.M. 1947, 67-416.

70-1-419. Future interest not void for improbable contingency. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

History: En. Sec. 1118, Civ. C. 1895; re-en. Sec. 4451, Rev. C. 1907; re-en. Sec. 6693, R.C.M. 1921; Cal. Civ. C. Sec. 697; Field Civ. C. Sec. 189; re-en. Sec. 6693, R.C.M. 1935; R.C.M. 1947, 67-323.

70-1-420. Future interest limited to class — posthumous children. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

History: En. Sec. 1119, Civ. C. 1895; re-en. Sec. 4452, Rev. C. 1907; re-en. Sec. 6694, R.C.M. 1921; Cal. Civ. C. Sec. 698; Field Civ. C. Sec. 190; re-en. Sec. 6694, R.C.M. 1935; R.C.M. 1947, 67-324.

Cross-References

Omitted children, 72-2-332.

70-1-421. Future interest subject to defeat — how — not void. A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof, nor is the future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

History: En. Sec. 1181, Civ. C. 1895; re-en. Sec. 4475, Rev. C. 1907; re-en. Sec. 6717, R.C.M. 1921; Cal. Civ. C. Sec. 740; Field Civ. C. Sec. 212; re-en. Sec. 6717, R.C.M. 1935; R.C.M. 1947, 67-418.

70-1-422. Future interest contingent on death without children — how defeated. A future interest depending on the contingency of the death of any person without successors, heirs, issue, or children is defeated by the birth of a posthumous child of such person, capable of taking by succession.

History: En. Sec. 45, p. 486, Bannack Stat.; re-en. Sec. 45, p. 403, Cod. Stat. 1871; re-en. Sec. 222, 5th Div. Rev. Stat. 1879; re-en. Sec. 280, 5th Div. Comp. Stat. 1887; amd.

Sec. 1180, Civ. C. 1895; re-en. Sec. 4474, Rev. C. 1907; re-en. Sec. 6716, R.C.M. 1921; Cal. Civ. C. Sec. 739; Field Civ. C. Sec. 211; re-en. Sec. 6716, R.C.M. 1935; R.C.M. 1947, 67-417.

70-1-423. Future interest not defeated by destruction of other interest. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest or by destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by 70-1-424 or where a forfeiture is imposed by statute as a penalty for the violation thereof.

History: En. Sec. 1182, Civ. C. 1895; re-en. Sec. 4476, Rev. C. 1907; re-en. Sec. 6718, R.C.M. 1921; Cal. Civ. C. Sec. 741; Field Civ. C. Sec. 213; re-en. Sec. 6718, R.C.M. 1935; R.C.M. 1947, 67-419.

70-1-424. Future contingent interest — termination of precedent interest. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect, but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

History: En. Sec. 1183, Civ. C. 1895; re-en. Sec. 4477, Rev. C. 1907; re-en. Sec. 6719, R.C.M. 1921; Cal. Civ. C. Sec. 742; Field Civ. C. Sec. 214; re-en. Sec. 6719, R.C.M. 1935; R.C.M. 1947, 67-420.

Part 5

Transfer of Property Grants and Their Interpretation

Part Cross-References

Transfer of real property, Title 70, ch. 20.

Small Tract Financing Act of Montana — trust indentures, Title 71, ch. 1, part 3.

70-1-501. Transfer defined. Transfer is an act of the parties or of the law by which the title to property is conveyed from one living person to another.

History: En. Sec. 1430, Civ. C. 1895; re-en. Sec. 4588, Rev. C. 1907; re-en. Sec. 6835, R.C.M. 1921; Cal. Civ. C. Sec. 1039; Field Civ. C. Sec. 458; re-en. Sec. 6835, R.C.M. 1935; R.C.M. 1947, 67-1501.

70-1-502. Voluntary transfer — applicability of contract rules. A voluntary transfer is an executed contract subject to all rules of law concerning contracts in general, except that a consideration is not necessary to its validity.

History: En. Sec. 1431, Civ. C. 1895; re-en. Sec. 4589, Rev. C. 1907; re-en. Sec. 6836, R.C.M. 1921; Cal. Civ. C. Sec. 1040; Field Civ. C. Sec. 459; re-en. Sec. 6836, R.C.M. 1935; R.C.M. 1947, 67-1502.

Cross-References

Contracts — obligations in general, Title 28, ch. 1.

70-1-503. What may be transferred. Property of any kind may be transferred, except as otherwise provided by this part.

History: En. Sec. 1440, Civ. C. 1895; re-en. Sec. 4590, Rev. C. 1907; re-en. Sec. 6837, R.C.M. 1921; Cal. Civ. C. Sec. 1044; Field Civ. C. Sec. 460; re-en. Sec. 6837, R.C.M. 1935; R.C.M. 1947, 67-1503.

70-1-504. Possibility not transferable. A mere possibility not coupled with an interest cannot be transferred.

History: En. Sec. 1441, Civ. C. 1895; re-en. Sec. 4591, Rev. C. 1907; re-en. Sec. 6838, R.C.M. 1921; Cal. Civ. C. Sec. 1045; Field Civ. C. Sec. 461; re-en. Sec. 6838, R.C.M. 1935; R.C.M. 1947, 67-1504.

70-1-505. Right of reentry or repossession transferable. A right of reentry or of repossession for breach of condition subsequent can be transferred.

History: En. Sec. 1442, Civ. C. 1895; re-en. Sec. 4592, Rev. C. 1907; re-en. Sec. 6839, R.C.M. 1921; Cal. Civ. C. Sec. 1046; Based on Field Civ. C. Sec. 462; re-en. Sec. 6839, R.C.M. 1935; R.C.M. 1947, 67-1505.

70-1-506. Oral transfer permitted. A transfer may be made without writing in every case in which a writing is not expressly required by statute.

History: En. Sec. 1450, Civ. C. 1895; re-en. Sec. 4594, Rev. C. 1907; re-en. Sec. 6841, R.C.M. 1921; Cal. Civ. C. Sec. 1052; Field Civ. C. Sec. 463; re-en. Sec. 6841, R.C.M. 1935; R.C.M. 1947, 67-1507.

70-1-507. Grant defined. A transfer in writing is called a grant or conveyance or bill of sale. The term "grant", in this part, includes all these instruments unless it is specially applied to real property.

History: En. Sec. 1451, Civ. C. 1895; re-en. Sec. 4595, Rev. C. 1907; re-en. Sec. 6842, R.C.M. 1921; Cal. Civ. C. Sec. 1053; re-en. Sec. 6842, R.C.M. 1935; R.C.M. 1947, 67-1508.

70-1-508. Delivery of grant necessary. A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.

History: En. Sec. 1452, Civ. C. 1895; re-en. Sec. 4596, Rev. C. 1907; re-en. Sec. 6843, R.C.M. 1921; Cal. Civ. C. Sec. 1054; Field Civ. C. Sec. 465; re-en. Sec. 6843, R.C.M. 1935; R.C.M. 1947, 67-1509.

70-1-509. Presumption of delivery. A grant duly executed is presumed to have been delivered at its date.

History: En. Sec. 1453, Civ. C. 1895; re-en. Sec. 4597, Rev. C. 1907; re-en. Sec. 6844, R.C.M. 1921; Cal. Civ. C. Sec. 1055; Field Civ. C. Sec. 466; re-en. Sec. 6844, R.C.M. 1935; R.C.M. 1947, 67-1510.

70-1-510. Delivery to grantee necessarily absolute. A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery is made.

History: En. Sec. 1454, Civ. C. 1895; re-en. Sec. 4598, Rev. C. 1907; re-en. Sec. 6845, R.C.M. 1921; Cal. Civ. C. Sec. 1056; Field Civ. C. Sec. 467; re-en. Sec. 6845, R.C.M. 1935; R.C.M. 1947, 67-1511.

70-1-511. Delivery in escrow. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and on delivery by the depositary, it will take effect. While in the possession of the third person and subject to condition, it is called an escrow.

History: En. Sec. 1455, Civ. C. 1895; re-en. Sec. 4599, Rev. C. 1907; re-en. Sec. 6846, R.C.M. 1921; Cal. Civ. C. Sec. 1057; Based on Field Civ. C. Sec. 468; re-en. Sec. 6846, R.C.M. 1935; R.C.M. 1947, 67-1512.

70-1-512. Constructive delivery. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

(1) where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered and under such circumstances that the grantee is entitled to immediate delivery; or

(2) where it is delivered to a stranger for the benefit of the grantee, and his assent is shown or may be presumed.

History: En. Sec. 1457, Civ. C. 1895; re-en. Sec. 4601, Rev. C. 1907; re-en. Sec. 6848, R.C.M. 1921; Cal. Civ. C. Sec. 1059; Field Civ. C. Sec. 470; re-en. Sec. 6848, R.C.M. 1935; R.C.M. 1947, 67-1514.

70-1-513. Grants — how interpreted generally. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this part.

History: En. Sec. 1470, Civ. C. 1895; re-en. Sec. 4602, Rev. C. 1907; re-en. Sec. 6849, R.C.M. 1921; Cal. Civ. C. Sec. 1066; Field Civ. C. Sec. 472; re-en. Sec. 6849, R.C.M. 1935; R.C.M. 1947, 67-1515.

Cross-References

Interpretation of contracts, Title 28, ch. 3.

70-1-514. Clear limitation not controlled by other words. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

History: En. Sec. 1471, Civ. C. 1895; re-en. Sec. 4603, Rev. C. 1907; re-en. Sec. 6850, R.C.M. 1921; Cal. Civ. C. Sec. 1067; Field Civ. C. Sec. 473; re-en. Sec. 6850, R.C.M. 1935; R.C.M. 1947, 67-1516.

70-1-515. Recitals — when resorted to. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

History: En. Sec. 1472, Civ. C. 1895; re-en. Sec. 4604, Rev. C. 1907; re-en. Sec. 6851, R.C.M. 1921; Cal. Civ. C. Sec. 1068; Field Civ. C. Sec. 474; re-en. Sec. 6851, R.C.M. 1935; R.C.M. 1947, 67-1517.

Cross-References

What contracts must be in writing, 28-2-903.

When extrinsic evidence concerning written agreement may be considered, 28-2-905.

70-1-516. Interpretation against grantor — exception. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the grantor.

History: En. Sec. 1473, Civ. C. 1895; re-en. Sec. 4605, Rev. C. 1907; re-en. Sec. 6852, R.C.M. 1921; Cal. Civ. C. Sec. 1069; Field Civ. C. Sec. 475; re-en. Sec. 6852, R.C.M. 1935; R.C.M. 1947, 67-1518.

70-1-517. Irreconcilable provisions. If several parts of a grant are absolutely irreconcilable, the former part prevails.

History: En. Sec. 1474, Civ. C. 1895; re-en. Sec. 4606, Rev. C. 1907; re-en. Sec. 6853, R.C.M. 1921; Cal. Civ. C. Sec. 1070; Field Civ. C. Sec. 476; re-en. Sec. 6853, R.C.M. 1935; R.C.M. 1947, 67-1519.

70-1-518. Meaning of heirs and issue in certain remainders. Where a future interest is limited by a grant to take effect on the death of any person without heirs or heirs of his body or without issue or in equivalent words, such words must be taken to mean successors or issue living at the death of the person named as ancestor.

History: En. Sec. 44, p. 486, Bannack Stat.; re-en. Sec. 44, p. 403, Cod. Stat. 1871; re-en. Sec. 221, 5th Div. Rev. Stat. 1879; re-en. Sec. 279, 5th Div. Comp. Stat. 1887; amd. Sec. 1475, Civ. C. 1895; re-en. Sec. 4607, Rev. C. 1907; re-en. Sec. 6854, R.C.M. 1921; Cal. Civ. C. Sec. 1071; Field Civ. C. Sec. 477; re-en. Sec. 6854, R.C.M. 1935; R.C.M. 1947, 67-1520.

Cross-References

Future interest contingent on death without children — how defeated, 70-1-422.

Share of heirs other than surviving spouse, 72-2-113.

70-1-519. Transfer vests title. A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has unless a different intention is expressed or is necessarily implied.

History: En. Sec. 1490, Civ. C. 1895; re-en. Sec. 4609, Rev. C. 1907; re-en. Sec. 6856, R.C.M. 1921; Cal. Civ. C. Sec. 1083; Based on Field Civ. C. Sec. 479; re-en. Sec. 6856, R.C.M. 1935; R.C.M. 1947, 67-1522.

70-1-520. Transfer of incidents. The transfer of a thing transfers also all its incidents unless expressly excepted, but the transfer of an incident to a thing does not transfer the thing itself.

History: En. Sec. 1491, Civ. C. 1895; re-en. Sec. 4610, Rev. C. 1907; re-en. Sec. 6857, R.C.M. 1921; Cal. Civ. C. Sec. 1084; Field Civ. C. Sec. 481; re-en. Sec. 6857, R.C.M. 1935; R.C.M. 1947, 67-1523.

70-1-521. Grant may inure to benefit of stranger. A present interest and the benefit of a condition or covenant respecting property may be taken by any natural person under a grant although not named a party thereto.

History: En. Sec. 1492, Civ. C. 1895; re-en. Sec. 4611, Rev. C. 1907; re-en. Sec. 6858, R.C.M. 1921; Cal. Civ. C. Sec. 1805; Field Civ. C. Sec. 482; re-en. Sec. 6858, R.C.M. 1935; R.C.M. 1947, 67-1524.

Part 6

Rentals — Hiring (Repealed. Sec. 230, Ch. 410, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

70-1-601. En. Sec. 2600, Civ. C. 1895; re-en. Sec. 5215, Rev. C. 1907; re-en. Sec. 7730, R.C.M. 1921; Cal. Civ. C. Sec. 1925; Field Civ. C. Sec. 979; re-en. Sec. 7730, R.C.M. 1935; R.C.M. 1947, 42-101.

70-1-602. En. Sec. 2602, Civ. C. 1895; re-en. Sec. 5217, Rev. C. 1907; re-en. Sec. 7732, R.C.M. 1921; Cal. Civ. C. Sec. 1927; Field Civ. C. Sec. 981; re-en. Sec. 7732, R.C.M. 1935; R.C.M. 1947, 42-103.

70-1-603. En. Sec. 2601, Civ. C. 1895; re-en. Sec. 5216, Rev. C. 1907; re-en. Sec. 7731, R.C.M. 1921; Cal. Civ. C. Sec. 1926; Field Civ. C. Sec. 980; re-en. Sec. 7731, R.C.M. 1935; R.C.M. 1947, 42-102.

70-1-604. En. Sec. 2603, Civ. C. 1895; re-en. Sec. 5218, Rev. C. 1907; re-en. Sec. 7733, R.C.M. 1921; Cal. Civ. C. Sec. 1928; Field Civ. C. Sec. 982; re-en. Sec. 7733, R.C.M. 1935; R.C.M. 1947, 42-104.

70-1-605. En. Sec. 2604, Civ. C. 1895; re-en. Sec. 5219, Rev. C. 1907; re-en. Sec. 7734, R.C.M. 1921; Cal. Civ. C. Sec. 1929; Field Civ. C. Sec. 983; re-en. Sec. 7734, R.C.M. 1935; R.C.M. 1947, 42-105.

70-1-606. En. Sec. 2605, Civ. C. 1895; re-en. Sec. 5220, Rev. C. 1907; re-en. Sec. 7735, R.C.M. 1921; Cal. Civ. C. Sec. 1930; Field Civ. C. Sec. 984; re-en. Sec. 7735, R.C.M. 1935; R.C.M. 1947, 42-106.

70-1-607. En. Sec. 2608, Civ. C. 1895; re-en. Sec. 5223, Rev. C. 1907; re-en. Sec. 7738, R.C.M. 1921; Cal. Civ. C. Sec. 1933; Field Civ. C. Sec. 987; re-en. Sec. 7738, R.C.M. 1935; R.C.M. 1947, 42-109.

70-1-608. En. Sec. 2609, Civ. C. 1895; re-en. Sec. 5224, Rev. C. 1907; re-en. Sec. 7739, R.C.M. 1921; Cal. Civ. C. Sec. 1934; Field Civ. C. Sec. 988; re-en. Sec. 7739, R.C.M. 1935; R.C.M. 1947, 42-110.

70-1-609. En. Sec. 2606, Civ. C. 1895; re-en. Sec. 5221, Rev. C. 1907; re-en. Sec. 7736, R.C.M. 1921; Cal. Civ. C. Sec. 1931; Field Civ. C. Sec. 985; re-en. Sec. 7736, R.C.M. 1935; R.C.M. 1947, 42-107.

70-1-610. En. Sec. 2607, Civ. C. 1895; re-en. Sec. 5222, Rev. C. 1907; re-en. Sec. 7737, R.C.M. 1921; Cal. Civ. C. Sec. 1932; Field Civ. C. Sec. 986; re-en. Sec. 7737, R.C.M. 1935; R.C.M. 1947, 42-108.

70-1-611. En. Sec. 2610, Civ. C. 1895; re-en. Sec. 5225, Rev. C. 1907; re-en. Sec. 7740, R.C.M. 1921; Cal. Civ. C. Sec. 1935; Field Civ. C. Sec. 989; re-en. Sec. 7740, R.C.M. 1935; R.C.M. 1947, 42-111.

Part 7
Gifts and Devises to Estates

70-1-701. Purpose. It is the purpose of this part to declare that a gift or devise may be made to the estate of a named or otherwise designated person and that a power to appoint to the estate of such a person may be created and exercised in order to ensure that persons who make inter vivos or testamentary conveyances that are subject to the law of Montana can effectively use forms of conveyances that are commonly used in other states to qualify for the federal estate and gift tax marital deductions.

History: En. Sec. 1, Ch. 376, L. 1979.

70-1-702. Estate defined. The word "estate" as used in this part means persons who may take interests in property.

History: En. Sec. 4, Ch. 376, L. 1979.

70-1-703. Conveyances to an estate. Unless a contrary intention appears, a devise, as defined in 72-1-103, or an inter vivos conveyance of a property interest to the estate of a named or otherwise designated person passes the interest as if the interest had been owned by that person. The interest may pass to the heirs of that person, may be used to satisfy devises made in that person's will, or may be used to satisfy claims for debts or taxes.

History: En. Sec. 2, Ch. 376, L. 1979; amd. Sec. 2, Ch. 494, L. 1993.

70-1-704. Creation or exercise of a power to appoint to an estate. A person may be given a power to appoint a legal or equitable interest in property to his own estate by will or deed. The donee of such a power is considered to have a general power of appointment exercisable in favor of any person. Permissible exercise of the power as created may include but is not limited to:

(1) direction to the personal representative of the donee to administer the interest as if it were an interest in the property of the donee;

(2) direction to the personal representative to use the interest to satisfy the donee's devises or claims for debts and taxes; or

(3) appointment of the interest to any person to whom the donee might give or devise his own property.

History: En. Sec. 3, Ch. 376, L. 1979.

Part 8
Uniform Statutory Rule Against Perpetuities (Renumbered by Code Commissioner, 1993)

Part Compiler's Comments

Sections Renumbered:

70-1-801.	Renumbered 72-2-1001.
70-1-802.	Renumbered 72-2-1002.
70-1-803.	Renumbered 72-2-1003.
70-1-804.	Renumbered 72-2-1004.
70-1-805.	Renumbered 72-2-1005.
70-1-806.	Renumbered 72-2-1006.
70-1-807.	Renumbered 72-2-1007.

CHAPTER 2

PERSONAL PROPERTY — SPECIAL KINDS QUIET TITLE AND PARTITION

Part 1 — Special Kinds

70-2-101. Thing in action defined.
70-2-102. Transfer and succession.
70-2-103 through 70-2-110 reserved.
70-2-111. Wild animals.
70-2-112. Repealed.
70-2-113. Repealed.

Part 2 — Quiet Title and Partition

70-2-201. Action for quieting title to personal property.
70-2-202. General procedural provisions applicable.
70-2-203 through 70-2-210 reserved.
70-2-211. Partition of personal property.
70-2-212. Real property partition provisions applicable.

Part 1
Special Kinds

70-2-101. Thing in action defined. A thing in action is a right to recover money or other personal property by a judicial proceeding.

History: En. Sec. 1350, Civ. C. 1895; re-en. Sec. 4557, Rev. C. 1907; re-en. Sec. 6804, R.C.M. 1921; Cal. Civ. C. Sec. 953; Based on Field Civ. C. Sec. 366; re-en. Sec. 6804, R.C.M. 1935; R.C.M. 1947, 67-1102.

Cross-References

Actions and special proceedings defined, 27-1-102.

70-2-102. Transfer and succession. A thing in action arising out of the violation of a right of property or out of an obligation may be transferred by the owner. Upon the death of the owner, it passes to his personal representatives except where in the cases provided in this code it passes to his devisees or successor in office.

History: En. Sec. 1351, Civ. C. 1895; re-en. Sec. 4558, Rev. C. 1907; re-en. Sec. 6805, R.C.M. 1921; Cal. Civ. C. Sec. 954; Field Civ. C. Sec. 367; re-en. Sec. 6805, R.C.M. 1935; R.C.M. 1947, 67-1103.

70-2-103 through 70-2-110 reserved.

70-2-111. Wild animals. Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them or when tamed or taken or held in the possession or disabled and immediately pursued.

History: En. Sec. 1072, Civ. C. 1895; re-en. Sec. 4423, Rev. C. 1907; re-en. Sec. 6665, R.C.M. 1921; Cal. Civ. C. Sec. 656; Field Civ. C. Sec. 161; re-en. Sec. 6665, R.C.M. 1935; R.C.M. 1947, 67-203.

Cross-References

Prohibition of possession of wild animals, 50-23-102.

Fish and wildlife — fishing, hunting, and trapping licenses, Title 87, ch. 2.

Fish and wildlife — restrictions and regulations, Title 87, ch. 3.

Game farms, Title 87, ch. 4, part 4.

Menageries and zoos, Title 87, ch. 4, part 8.

Unlawful capture of furbearer for use on fur farm, 87-4-1014.

70-2-112. Repealed. Sec. 2, Ch. 355, L. 1987.

History: En. Sec. 1, Ch. 97, L. 1933; re-en. Sec. 6665.1, R.C.M. 1935; R.C.M. 1947, 67-204.

70-2-113. Repealed. Sec. 2, Ch. 355, L. 1987.

History: En. Sec. 2, Ch. 97, L. 1933; re-en. Sec. 6665.2, R.C.M. 1935; amd. Sec. 196, Ch. 310, L. 1974; amd. Sec. 2, Ch. 10, L. 1977; R.C.M. 1947, 67-205; amd. Sec. 1, Ch. 277, L. 1983.

Part 2

Quiet Title and Partition

70-2-201. Action for quieting title to personal property. Any person claiming title to personal property, whether in actual possession thereof or not, may bring an action in the district court of any county wherein such personal property or any part thereof is situated against any person or persons claiming any interest therein by reason of alleged ownership, lien, or otherwise and by a decree of such court may have established and determined finally the rights of all claimants to such personal property.

History: En. Sec. 1, Ch. 51, L. 1935; re-en. Sec. 9478.1, R.C.M. 1935; R.C.M. 1947, 93-6201.

70-2-202. General procedural provisions applicable. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4, 12(a), and 41(e), M.R.Civ.P., are applicable to the action for which provision is made in 70-2-201.

History: En. Sec. 2, Ch. 51, L. 1935; re-en. Sec. 9478.2, R.C.M. 1935; R.C.M. 1947, 93-6202; amd. Sec. 1, Ch. 115, L. 1979.

70-2-203 through 70-2-210 reserved.

70-2-211. Partition of personal property. (1) When any personal property is owned by two or more persons, any one or more thereof may bring an action, according to the respective rights of the persons interested therein, for the partition of such property or for a sale of the same or any part thereof if it appears that a partition cannot be made without great prejudice to the owners.

(2) Such action shall be brought in the county wherein said property or any part thereof is situated.

History: En. Sec. 1, Ch. 143, L. 1959; R.C.M. 1947, 93-6301.1.

70-2-212. Real property partition provisions applicable. The provisions contained in chapter 29 of this title, which prescribe the manner in which real property may be sold, are hereby made applicable to the action which is authorized by 70-2-211.

History: En. Sec. 2, Ch. 143, L. 1959; R.C.M. 1947, 93-6301.2.

CHAPTER 3

TRANSFER OF PERSONAL PROPERTY — GIFTS

Part 1 — General Provisions

70-3-101. Gift defined.
70-3-102. Gift — how made.
70-3-103. Gift not revocable.
70-3-104. Unsolicited goods considered gift.

Part 2 — Gifts in View of Death

70-3-201. Gift in view of death defined.
70-3-202. When gift presumed to be in view of death.
70-3-203. Revocation.
70-3-204. Effect of will upon gift.
70-3-205. When gift treated as legacy.

Part 1

General Provisions

70-3-101. Gift defined. A gift is a transfer of personal property made voluntarily and without consideration.

History: En. Sec. 1550, Civ. C. 1895; re-en. Sec. 4635, Rev. C. 1907; re-en. Sec. 6882, R.C.M. 1921; Cal. Civ. C. Sec. 1146; Field Civ. C. Sec. 500; re-en. Sec. 6882, R.C.M. 1935; R.C.M. 1947, 67-1706.

Cross-References

Montana Uniform Transfers to Minors Act, Title 72, ch. 26.

70-3-102. Gift — how made. A verbal gift is not valid unless the means of obtaining possession and control of the thing are given or, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

History: En. Sec. 1551, Civ. C. 1895; re-en. Sec. 4636, Rev. C. 1907; re-en. Sec. 6883, R.C.M. 1921; Cal. Civ. C. Sec. 1147; Field Civ. C. Sec. 501; re-en. Sec. 6883, R.C.M. 1935; R.C.M. 1947, 67-1707.

70-3-103. Gift not revocable. A gift, other than a gift in view of death, cannot be revoked by the giver.

History: En. Sec. 1552, Civ. C. 1895; re-en. Sec. 4637, Rev. C. 1907; re-en. Sec. 6884, R.C.M. 1921; Cal. Civ. C. Sec. 1148; Field Civ. C. Sec. 502; re-en. Sec. 6884, R.C.M. 1935; R.C.M. 1947, 67-1708.

70-3-104. Unsolicited goods considered gift. Unless otherwise agreed, where unsolicited goods are delivered to a person, he may refuse delivery of the goods, or if the goods are delivered, the person is not bound to return the goods to the sender. If unsolicited goods are either addressed to or intended for the recipient, they shall be deemed a gift, and the recipient may use or dispose of them in any manner without obligation to the sender.

History: En. Sec. 1, Ch. 210, L. 1967; R.C.M. 1947, 67-1706.1.

Part 2
Gifts in View of Death

70-3-201. Gift in view of death defined. A gift in view of death is one which is made in contemplation, fear, or peril of death and with intent that it shall take effect only in case of the death of the giver.

History: En. Sec. 1553, Civ. C. 1895; re-en. Sec. 4638, Rev. C. 1907; re-en. Sec. 6885, R.C.M. 1921; Cal. Civ. C. Sec. 1149; Field Civ. C. Sec. 503; re-en. Sec. 6885, R.C.M. 1935; R.C.M. 1947, 67-1709.

70-3-202. When gift presumed to be in view of death. A gift made during the last illness of the giver or under circumstances which would impress him with an expectation of speedy death is presumed to be a gift in view of death.

History: En. Sec. 1554, Civ. C. 1895; re-en. Sec. 4639, Rev. C. 1907; re-en. Sec. 6886, R.C.M. 1921; Cal. Civ. C. Sec. 1150; Field Civ. C. Sec. 504; re-en. Sec. 6886, R.C.M. 1935; R.C.M. 1947, 67-1710.

70-3-203. Revocation. A gift in view of death may be revoked by the giver at any time and is revoked by his recovery from the illness or escape from the peril under the presence of which it was made or by the occurrence of any event which would operate as a revocation of a will made at the same time.

History: En. Sec. 1555, Civ. C. 1895; re-en. Sec. 4640, Rev. C. 1907; re-en. Sec. 6887, R.C.M. 1921; Cal. Civ. C. Sec. 1151; Field Civ. C. Sec. 505; re-en. Sec. 6887, R.C.M. 1935; R.C.M. 1947, 67-1711.

70-3-204. Effect of will upon gift. A gift in view of death is not affected by a previous will or by a subsequent will unless it expresses intention to revoke the gift.

History: En. Sec. 1556, Civ. C. 1895; re-en. Sec. 4641, Rev. C. 1907; re-en. Sec. 6888, R.C.M. 1921; Cal. Civ. C. Sec. 1152; Field Civ. C. Sec. 506; re-en. Sec. 6888, R.C.M. 1935; R.C.M. 1947, 67-1712.

Cross-References

Wills, will contracts, and custody and deposit of wills, Title 72, ch. 2, part 5.

Wills — rules of construction, Title 72, ch. 2, part 6.

70-3-205. When gift treated as legacy. A gift in view of death must be treated as a legacy so far as relates to the creditors of the giver.

History: En. Sec. 1557, Civ. C. 1895; re-en. Sec. 4642, Rev. C. 1907; re-en. Sec. 6889, R.C.M. 1921; Cal. Civ. C. Sec. 1153; Field Civ. C. Sec. 507; re-en. Sec. 6889, R.C.M. 1935; R.C.M. 1947, 67-1713.

CHAPTER 4

ACCESSION AND INTERMIXTURE PERSONAL PROPERTY

Part 1 — General Provisions

70-4-101. Uniform Commercial Code — applicability.
70-4-102. Uniting several things — to whom whole belongs.
70-4-103. Rules for determination of principal part.

Part 2 — Uniting of Materials—Workmanship

70-4-201. Use of materials belonging to another — reimbursement.
70-4-202. Uniting of materials of maker and other.
70-4-203. Uniting of materials of several owners.

70-4-204. Use of materials without consent — owner prevails.
70-4-205. Owner of materials wrongfully used — election of remedies.
70-4-206. Wrongdoer liable in damages.

Part 1
General Provisions

70-4-101. Uniform Commercial Code — applicability. The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 67-1410 by Sec. 11-147, Ch. 264, L. 1963; R.C.M. 1947, 67-1410.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

70-4-102. Uniting several things — to whom whole belongs. When things belonging to different owners have been united so as to form a single thing and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner or surrender the whole to him.

History: En. Sec. 1410, Civ. C. 1895; re-en. Sec. 4579, Rev. C. 1907; re-en. Sec. 6826, R.C.M. 1921; Cal. Civ. C. Sec. 1025; Field Civ. C. Sec. 449; re-en. Sec. 6826, R.C.M. 1935; R.C.M. 1947, 67-1401.

Cross-References

Priority when goods commingled or processed, 30-9-315.

70-4-103. Rules for determination of principal part. (1) That part is deemed to be the principal to which the other has been united only for the use, ornament, or completion of the former unless the latter is the more valuable and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him although some injury should result to the thing to which it has been united.

(2) If neither part can be considered the principal within the rule prescribed by subsection (1), the more valuable or, if the values are nearly equal, the most considerable in bulk is to be deemed the principal part.

History: En. Secs. 1411, 1412, Civ. C. 1895; re-en. Secs. 4580, 4581, Rev. C. 1907; re-en. Secs. 6827, 6828, R.C.M. 1921; Cal. Civ. C. Secs. 1026, 1027; Field Civ. C. Secs. 450, 451; re-en. Secs. 6827, 6828, R.C.M. 1935; R.C.M. 1947, 67-1402, 67-1403.

Part 2
Uniting of Materials — Workmanship

70-4-201. Use of materials belonging to another — reimbursement. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker on reimbursing the value of the materials.

History: En. Sec. 1413, Civ. C. 1895; re-en. Sec. 4582, Rev. C. 1907; re-en. Sec. 6829, R.C.M. 1921; Cal. Civ. C. Sec. 1028; Field Civ. C. Sec. 452; re-en. Sec. 6829, R.C.M. 1935; R.C.M. 1947, 67-1404.

70-4-202. Uniting of materials of maker and other. Where one has made use of materials which in part belong to him and in part to another in order to form a thing of a new description, without having destroyed any of the materials but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to him and, as respects the other, of the materials belonging to him and the price of his workmanship.

History: En. Sec. 1414, Civ. C. 1895; re-en. Sec. 4583, Rev. C. 1907; re-en. Sec. 6830, R.C.M. 1921; Cal. Civ. C. Sec. 1029; Field Civ. C. Sec. 453; re-en. Sec. 6830, R.C.M. 1935; R.C.M. 1947, 67-1405.

70-4-203. Uniting of materials of several owners. When a thing has been formed by the admixture of several materials of different owners and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials, but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

History: En. Sec. 1415, Civ. C. 1895; re-en. Sec. 4584, Rev. C. 1907; re-en. Sec. 6831, R.C.M. 1921; Cal. Civ. C. Sec. 1030; Field Civ. C. Sec. 454; re-en. Sec. 6831, R.C.M. 1935; R.C.M. 1947, 67-1406.

70-4-204. Use of materials without consent — owner prevails. The foregoing sections of this chapter are not applicable to cases in which one willfully uses the materials of another without his consent, but in such cases, the product belongs to the owner of material if its identity can be traced.

History: En. Sec. 1416, Civ. C. 1895; re-en. Sec. 4585, Rev. C. 1907; re-en. Sec. 6832, R.C.M. 1921; Cal. Civ. C. Sec. 1031; Field Civ. C. Sec. 455; re-en. Sec. 6832, R.C.M. 1935; R.C.M. 1947, 67-1407.

70-4-205. Owner of materials wrongfully used — election of remedies. In all cases where one whose material has been used without his knowledge in order to form a product of a different description can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof or, where he is entitled to the product, the value thereof in place of the product.

History: En. Sec. 1417, Civ. C. 1895; re-en. Sec. 4586, Rev. C. 1907; re-en. Sec. 6833, R.C.M. 1921; Cal. Civ. C. Sec. 1032; Field Civ. C. Sec. 456; re-en. Sec. 6833, R.C.M. 1935; R.C.M. 1947, 67-1408.

70-4-206. Wrongdoer liable in damages. One who wrongfully employs materials belonging to another is liable to him in damages as well as under the foregoing provisions of this chapter.

History: En. Sec. 1418, Civ. C. 1895; re-en. Sec. 4587, Rev. C. 1907; re-en. Sec. 6834, R.C.M. 1921; Cal. Civ. C. Sec. 1033; Field Civ. C. Sec. 457; re-en. Sec. 6834, R.C.M. 1935; R.C.M. 1947, 67-1409.

Cross-References

Damages, Title 27, ch. 1, parts 2 and 3.

CHAPTER 5

FINDERS

Part 1 — Rights and Duties of Finders Generally

70-5-101. Nonapplicability to things abandoned.
70-5-102. Finder not bound to take charge — status as depositary.
70-5-103. Duty to inform owner when known.
70-5-104. Right of finder to require proof of claimant's ownership.
70-5-105. Compensation of finder.
70-5-106. Exoneration of finder by storage of thing found.
70-5-107. Exoneration of owner by surrender of thing to finder.

Part 2 — Procedure

70-5-201. When finder may sell thing found.
70-5-202. How sale conducted.
70-5-203 through 70-5-209. Repealed.

Chapter Cross-References

Performance to one of several joint creditors, 28-1-1103.

Part 1

Rights and Duties of Finders Generally

70-5-101. Nonapplicability to things abandoned. The provisions of this chapter have no application to things which have been intentionally abandoned by their owners.

History: En. Sec. 2528, Civ. C. 1895; re-en. Sec. 5186, Rev. C. 1907; re-en. Sec. 7693, R.C.M. 1921; Cal. Civ. C. Sec. 1872; Field Civ. C. Sec. 946; re-en. Sec. 7693, R.C.M. 1935; R.C.M. 1947, 20-409.

70-5-102. Finder not bound to take charge — status as depositary. One who finds a thing lost is not bound to take charge of it, but if he does so, he is thenceforth a depositary for the owner, with the rights and obligations of a depositary for hire.

History: En. Sec. 2520, Civ. C. 1895; re-en. Sec. 5178, Rev. C. 1907; re-en. Sec. 7685, R.C.M. 1921; Cal. Civ. C. Sec. 1864; Field Civ. C. Sec. 938; re-en. Sec. 7685, R.C.M. 1935; R.C.M. 1947, 20-401.

Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Bailment — deposit, Title 70, ch. 6.

70-5-103. Duty to inform owner when known. If any person finds any money, goods, things in action, or other personal property or saves any domestic animal from drowning or starvation when the property is of a value of $10 or more and he knows or suspects who the owner is, he must use reasonable diligence to inform the owner thereof and make restitution without compensation, further than a reasonable charge for saving and taking care thereof. If he fails to do so, he is liable in damages to the owner and has no claim to any reward offered by the owner for the recovery of the thing or to any compensation for his trouble or expenses.

History: En. Sec. 2900, Pol. C. 1895; re-en. Sec. 1996, Rev. C. 1907; re-en. Sec. 7694, R.C.M. 1921; Cal. Pol. C. Sec. 3136; re-en. Sec. 7694, R.C.M. 1935; R.C.M. 1947, 20-410(part); amd. Sec. 2, Ch. 115, L. 1979.

70-5-104. Right of finder to require proof of claimant's ownership. The finder of a thing may in good faith before giving it up require reasonable proof of ownership from any person claiming it.

History: En. Sec. 2522, Civ. C. 1895; re-en. Sec. 5180, Rev. C. 1907; re-en. Sec. 7687, R.C.M. 1921; Cal. Civ. C. Sec. 1866; Field Civ. C. Sec. 940; re-en. Sec. 7687, R.C.M. 1935; R.C.M. 1947, 20-403.

70-5-105. Compensation of finder. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation and for any other service necessarily performed by him about it and to a reasonable reward for keeping it.

History: En. Sec. 2523, Civ. C. 1895; re-en. Sec. 5181, Rev. C. 1907; re-en. Sec. 7688, R.C.M. 1921; Cal. Civ. Sec. 1867; Field. Civ. C. Sec. 941; re-en. Sec. 7688, R.C.M. 1935; R.C.M. 1947, 20-404.

70-5-106. Exoneration of finder by storage of thing found. The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character at a reasonable expense.

History: En. Sec. 2524, Civ. C. 1895; re-en. Sec. 5182, Rev. C. 1907; re-en. Sec. 7689, R.C.M. 1921; Cal. Civ. C. Sec. 1868; Field Civ. C. Sec. 942; re-en. Sec. 7689, R.C.M. 1935; R.C.M. 1947, 20-405.

70-5-107. Exoneration of owner by surrender of thing to finder. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

History: En. Sec. 2527, Civ. C. 1895; re-en. Sec. 5185, Rev. C. 1907; re-en. Sec. 7692, R.C.M. 1921; Cal. Civ. C. Sec. 1868; Field. Civ. C. Sec. 945; re-en. Sec. 7692, R.C.M. 1935; R.C.M. 1947, 20-408.

Part 2

Procedure

70-5-201. When finder may sell thing found. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found or being found refuses upon demand to pay the lawful charges of the finder, in the following cases:

(1) when the thing is in danger of perishing or of losing the greater part of its value; or

(2) when the lawful charges of the finder amount to two-thirds of its value.

History: En. Sec. 2525, Civ. C. 1895; re-en. Sec. 5183, Rev. C. 1907; re-en. Sec. 7690, R.C.M. 1921; Cal. Civ. C. Sec. 1869; Field Civ. C. Sec. 943; re-en. Sec. 7690, R.C.M. 1935; R.C.M. 1947, 20-406.

70-5-202. How sale conducted. A sale under the provisions of 70-5-201 must be made in the same manner as the sale of a thing pledged.

History: En. Sec. 2526, Civ. C. 1895; re-en. Sec. 5184, Rev. C. 1907; re-en. Sec. 7691, R.C.M. 1921; Cal. Civ. C. Sec. 1870; Field Civ. C. Sec. 944; re-en. Sec. 7691, R.C.M. 1935; R.C.M. 1947, 20-407.

70-5-203 through 70-5-209. Repealed. Sec. 1, Ch. 252, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

70-5-203. En. Sec. 2900, Pol. C. 1895; re-en. Sec. 1996, Rev. C. 1907; re-en. Sec. 7694, R.C.M. 1921; Cal. Pol. C. Sec. 3136; re-en. Sec. 7694, R.C.M. 1935; R.C.M. 1947, 20-410(part).

70-5-204. En. Sec. 2901, Pol. C. 1895; re-en. Sec. 1997, Rev. C. 1907; re-en. Sec. 7695, R.C.M. 1921; Cal. Pol. C. Sec. 3137; re-en. Sec. 7695, R.C.M. 1935; R.C.M. 1947, 20-411.

70-5-205. En. Sec. 2902, Pol. C. 1895; re-en. Sec. 1998, Rev. C. 1907; re-en. Sec. 7696, R.C.M. 1921; Cal. Pol. C. Sec. 3138; re-en. Sec. 7696, R.C.M. 1935; R.C.M. 1947, 20-412.

70-5-206. En. Sec. 2903, Pol. C. 1895; re-en. Sec. 1999, Rev. C. 1907; re-en. Sec. 7697, R.C.M. 1921; Cal. Pol. C. Sec. 3139; re-en. Sec. 7697, R.C.M. 1935; R.C.M. 1947, 20-413.

70-5-207. En. Sec. 2904, Pol. C. 1895; re-en. Sec. 2000, Rev. C. 1907; re-en. Sec. 7698, R.C.M. 1921; Cal. Pol. C. Sec. 3140; re-en. Sec. 7698, R.C.M. 1935; R.C.M. 1947, 20-414.

70-5-208. En. Sec. 2906, Pol. C. 1895; re-en. Sec. 2002, Rev. C. 1907; re-en. Sec. 7700, R.C.M. 1921; Cal. Pol. C. Sec. 3142; re-en. Sec. 7700, R.C.M. 1935; R.C.M. 1947, 20-416.

70-5-209. En. Sec. 2905, Pol. C. 1895; re-en. Sec. 2001, Rev. C. 1907; re-en. Sec. 7699, R.C.M. 1921; Cal. Pol. C. Sec. 3141; re-en. Sec. 7699, R.C.M. 1935; R.C.M. 1947, 20-415.

CHAPTER 6

BAILMENT — DEPOSIT

Part 1 — Nature and Classification of Deposits

70-6-101. Deposit — voluntary or involuntary.
70-6-102. Voluntary deposit — how made.
70-6-103. Involuntary deposit — how made.
70-6-104. Involuntary depositary bound to take charge.
70-6-105. Involuntary deposit as gratuitous.
70-6-106. Deposit for keeping defined.
70-6-107. Deposit for exchange defined.
70-6-108. Deposit for exchange — title passes.

Part 2 — Rights and Duties of the Parties Generally

70-6-201. Depositary not to use or open thing deposited.
70-6-202. Liability for damage from wrongful use.
70-6-203. Loss or injury of thing deposited.
70-6-204. Extent of depositary's liability for negligence.
70-6-205. Sale of thing in danger of perishing.
70-6-206. Duty of depositary of animals.
70-6-207. Service rendered by depositary.
70-6-208. Notice to owner of adverse claim.
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70-6-210. Depositor to indemnify depositary — damage — expenses.
70-6-211. Depositary to deliver on demand.
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70-6-213. Place of delivery.
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Part 3 — Gratuitous Deposits

70-6-301. Gratuitous deposit defined.
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70-6-402. Deposit for hire defined.
70-6-403. Degree of care required of depositary for hire.
70-6-404. Rate of compensation for fraction of week or half month.

70-6-405. Termination of deposit.
70-6-406 through 70-6-410 reserved.
70-6-411. Sale to pay costs of storage.
70-6-412. Application of proceeds of sale.
70-6-413 through 70-6-419 reserved.
70-6-420. Default in payment of storage space rental fees — notice — sale of contents.

Part 5 — Innkeepers

70-6-501. Innkeeper's liability as to property of guests — dollar limitation.
70-6-502. No liability without negligence.
70-6-503. Loss or damage by fire — liability for negligence.
70-6-504. How exempted from liability — safe.
70-6-505. Storage of property in outbuilding — nonliability.
70-6-506 through 70-6-510 reserved.
70-6-511. Eviction of guests.
70-6-512. Innkeeper's responsibilities — limits.
70-6-513. Consumption or possession of alcohol — civil liability — licensure protection.
70-6-514. Liability of parent or guardian for minor's damage to public accommodation.

Chapter Cross-References

Performance to one of several joint creditors, 28-1-1103.

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Part 1
Nature and Classification of Deposits

70-6-101. Deposit — voluntary or involuntary. A deposit may be:

(1) voluntary or involuntary; and

(2) for safekeeping or for exchange.

History: En. Sec. 2440, Civ. C. 1895; re-en. Sec. 5133, Rev. C. 1907; re-en. Sec. 7636, R.C.M. 1921; Cal. Civ. C. Sec. 1813; Field Civ. C. Sec. 907; re-en. Sec. 7636, R.C.M. 1935; R.C.M. 1947, 20-101.

Cross-References

When seller must act as depositary, 30-11-201.

70-6-102. Voluntary deposit — how made. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former or of a third party. The person giving is called the depositor and the person receiving the depositary.

History: En. Sec. 2441, Civ. C. 1895; re-en. Sec. 5134, Rev. C. 1907; re-en. Sec. 7637, R.C.M. 1921; Cal. Civ. C. Sec. 1814; Field Civ. C. Sec. 908; re-en. Sec. 7637, R.C.M. 1935; R.C.M. 1947, 20-102.

70-6-103. Involuntary deposit — how made. An involuntary deposit is made:

(1) by the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of the owner; or

(2) in cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it out of necessity to the care of any person.

History: En. Sec. 2442, Civ. C. 1895; re-en. Sec. 5135, Rev. C. 1907; re-en. Sec. 7638, R.C.M. 1921; Cal. Civ. C. Sec. 1815; Field Civ. C. Sec. 909; re-en. Sec. 7638, R.C.M. 1935; R.C.M. 1947, 20-103.

70-6-104. Involuntary depositary bound to take charge. The person with whom a thing is deposited in the manner described in 70-6-103 is bound to take charge of it if able to do so.

History: En. Sec. 2443, Civ. C. 1895; re-en. Sec. 5136, Rev. C. 1907; re-en. Sec. 7639, R.C.M. 1921; Cal. Civ. C. Sec. 1816; Field Civ. C. Sec. 910; re-en. Sec. 7639, R.C.M. 1935; R.C.M. 1947, 20-104.

70-6-105. Involuntary deposit as gratuitous. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

History: En. Sec. 2481, Civ. C. 1895; re-en. Sec. 5154, Rev. C. 1907; re-en. Sec. 7657, R.C.M. 1921; Cal. Civ. C. Sec. 1845; Field Civ. C. Sec. 928; re-en. Sec. 7657, R.C.M. 1935; R.C.M. 1947, 20-210.

70-6-106. Deposit for keeping defined. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

History: En. Sec. 2444, Civ. C. 1895; re-en. Sec. 5137, Rev. C. 1907; re-en. Sec. 7640, R.C.M. 1921; Cal. Civ. C. Sec. 1817; Field Civ. C. Sec. 911; re-en. Sec. 7640, R.C.M. 1935; R.C.M. 1947, 20-105.

70-6-107. Deposit for exchange defined. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

History: En. Sec. 2445, Civ. C. 1895; re-en. Sec. 5138, Rev. C. 1907; re-en. Sec. 7641, R.C.M. 1921; Cal. Civ. C. Sec. 1818; Field Civ. C. Sec. 912; re-en. Sec. 7641, R.C.M. 1935; R.C.M. 1947, 20-106.

70-6-108. Deposit for exchange — title passes. A deposit for exchange transfers to the depositary the title to the thing deposited and creates between him and the depositor the relation of debtor and creditor merely.

History: En. Sec. 2540, Civ. C. 1895; re-en. Sec. 5187, Rev. C. 1907; re-en. Sec. 7701, R.C.M. 1921; Cal. Civ. C. Sec. 1878; Field Civ. C. Sec. 947; re-en. Sec. 7701, R.C.M. 1935; R.C.M. 1947, 20-501.

Part 2

Rights and Duties of the Parties Generally

70-6-201. Depositary not to use or open thing deposited. A depositary may not use the thing deposited or permit it to be used for any purpose without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

History: En. Sec. 2462, Civ. C. 1895; re-en. Sec. 5147, Rev. C. 1907; re-en. Sec. 7650, R.C.M. 1921; Cal. Civ. C. Sec. 1835; Field Civ. C. Sec. 921; re-en. Sec. 7650, R.C.M. 1935; R.C.M. 1947, 20-203.

70-6-202. Liability for damage from wrongful use. A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof unless such damage must inevitably have happened though the property had not been used.

History: En. Sec. 2463, Civ. C. 1895; re-en. Sec. 5148, Rev. C. 1907; re-en. Sec. 7651, R.C.M. 1921; Cal. Civ. C. Sec. 1836; Field Civ. C. Sec. 922; re-en. Sec. 7651, R.C.M. 1935; R.C.M. 1947, 20-204.

70-6-203. Loss or injury of thing deposited. If a thing is lost during its deposit and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred so far as he has information concerning them or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur.

History: En. Sec. 2465, Civ. C. 1895; re-en. Sec. 5150, Rev. C. 1907; re-en. Sec. 7653, R.C.M. 1921; Cal. Civ. C. Sec. 1838; Based on Field Civ. C. Sec. 924; re-en. Sec. 7653, R.C.M. 1935; R.C.M. 1947, 20-206.

Cross-References

Liability, Title 27, ch. 1, part 7.

70-6-204. Extent of depositary's liability for negligence. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor or has reason to suppose the thing deposited to be worth.

History: En. Sec. 2467, Civ. C. 1895; re-en. Sec. 5152, Rev. C. 1907; re-en. Sec. 7655, R.C.M. 1921; Cal. Civ. C. Sec. 1840; Based on Field Civ. C. Sec. 926; re-en. Sec. 7655, R.C.M. 1935; R.C.M. 1947, 20-208.

Cross-References

Liability, Title 27, ch. 1, part 7.

70-6-205. Sale of thing in danger of perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

History: En. Sec. 2464, Civ. C. 1895; re-en. Sec. 5149, Rev. C. 1907; re-en. Sec. 7652, R.C.M. 1921; Cal. Civ. C. Sec. 1837; Field Civ. C. Sec. 923; re-en. Sec. 7652, R.C.M. 1935; R.C.M. 1947, 20-205.

70-6-206. Duty of depositary of animals. A depositary of living animals must provide them with suitable food and shelter and treat them kindly.

History: En. Sec. 2461, Civ. C. 1895; re-en. Sec. 5146, Rev. C. 1907; re-en. Sec. 7649, R.C.M. 1921; Cal. Civ. C. Sec. 1834; Field Civ. C. Sec. 920; re-en. Sec. 7649, R.C.M. 1935; R.C.M. 1947, 20-202.

Cross-References

Cruelty to animals — exception, 45-8-211.

70-6-207. Service rendered by depositary. So far as any service is rendered by a depositary or required from him, his duties and liabilities are prescribed by the law on employment and service.

History: En. Sec. 2466, Civ. C. 1895; re-en. Sec. 5151, Rev. C. 1907; re-en. Sec. 7654, R.C.M. 1921; Cal. Civ. C. Sec. 1839; Field Civ. C. Sec. 925; re-en. Sec. 7654, R.C.M. 1935; R.C.M. 1947, 20-207.

70-6-208. Notice to owner of adverse claim. A depositary must give prompt notice to the person for whose benefit the deposit was made of any proceedings taken adversely to his interest in the thing deposited which may tend to excuse the depositary from delivering the thing to him.

History: En. Sec. 2453, Civ. C. 1895; re-en. Sec. 5142, Rev. C. 1907; re-en. Sec. 7645, R.C.M. 1921; Cal. Civ. C. Sec. 1825; Field Civ. C. Sec. 916; re-en. Sec. 7645, R.C.M. 1935; R.C.M. 1947, 20-110.

70-6-209. Notice to true owner of thing wrongfully detained. A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit, and if within a reasonable time afterwards he does not claim it and sufficiently establish his right thereto and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice upon returning the thing to the depositor or assuming, in good faith, a new obligation changing his position in respect to the thing to his prejudice.

History: En. Sec. 2454, Civ. C. 1895; re-en. Sec. 5143, Rev. C. 1907; re-en. Sec. 7646, R.C.M. 1921; Cal. Civ. C. Sec. 1826; Field Civ. C. Sec. 917; re-en. Sec. 7646, R.C.M. 1935; R.C.M. 1947, 20-111.

70-6-210. Depositor to indemnify depositary — damage — expenses. A depositor must indemnify the depositary for:

(1) all damage caused to him by the defects or vices of the thing deposited; and

(2) all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

History: En. Sec. 2460, Civ. C. 1895; re-en. Sec. 5145, Rev. C. 1907; re-en. Sec. 7648, R.C.M. 1921; Cal. Civ. C. Sec. 1833; Field Civ. C. Sec. 919; re-en. Sec. 7648, R.C.M. 1935; R.C.M. 1947, 20-201.

70-6-211. Depositary to deliver on demand. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited or has been forbidden or prevented from doing so by the real owner thereof or by the act of the law and has given the notice required by 70-6-208.

History: En. Sec. 2450, Civ. C. 1895; re-en. Sec. 5139, Rev. C. 1907; re-en. Sec. 7642, R.C.M. 1921; Cal. Civ. C. Sec. 1822; Field Civ. C. Sec. 913; re-en. Sec. 7642, R.C.M. 1935; R.C.M. 1947, 20-107.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

70-6-212. No duty to deliver without demand. A depositary is not bound to deliver a thing deposited without demand even where the deposit is made for a specified time.

History: En. Sec. 2451, Civ. C. 1895; re-en. Sec. 5140, Rev. C. 1907; re-en. Sec. 7643, R.C.M. 1921; Cal. Civ. C. Sec. 1823; Field Civ. C. Sec. 914; re-en. Sec. 7643, R.C.M. 1935; R.C.M. 1947, 20-108.

70-6-213. Place of delivery. A depositary must deliver the thing deposited at his residence or place of business as may be most convenient for him.

History: En. Sec. 2452, Civ. C. 1895; re-en. Sec. 5141, Rev. C. 1907; re-en. Sec. 7644, R.C.M. 1921; Cal. Civ. C. Sec. 1824; Field Civ. C. Sec. 915; re-en. Sec. 7644, R.C.M. 1935; R.C.M. 1947, 20-109.

70-6-214. Delivery of thing owned jointly. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof if it can be done without injury to the thing.

History: En. Sec. 2455, Civ. C. 1895; re-en. Sec. 5144, Rev. C. 1907; re-en. Sec. 7647, R.C.M. 1921; Cal. Civ. C. Sec. 1827; Field Civ. C. Sec. 918; re-en. Sec. 7647, R.C.M. 1935; R.C.M. 1947, 20-112.

Part 3
Gratuitous Deposits

70-6-301. Gratuitous deposit defined. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

History: En. Sec. 2480, Civ. C. 1895; re-en. Sec. 5153, Rev. C. 1907; re-en. Sec. 7656, R.C.M. 1921; Cal. Civ. C. Sec. 1844; Field Civ. C. Sec. 927; re-en. Sec. 7656, R.C.M. 1935; R.C.M. 1947, 20-209.

70-6-302. Degree of care required of gratuitous depositary. A gratuitous depositary must use at least slight care for the preservation of the thing deposited.

History: En. Sec. 2482, Civ. C. 1895; re-en. Sec. 5155, Rev. C. 1907; re-en. Sec. 7658, R.C.M. 1921; Cal. Civ. C. Sec. 1846; Field Civ. C. Sec. 929; re-en. Sec. 7658, R.C.M. 1935; R.C.M. 1947, 20-211.

70-6-303. When duties of gratuitous depositary cease. The duties of a gratuitous depositary cease upon his:

(1) restoring the thing deposited to its owner; or

(2) giving reasonable notice to the owner to remove it and the owner failing to do so within a reasonable time. But an involuntary depositary under 70-6-103(2) cannot give such notice until the emergency which gave rise to the deposit is past.

History: En. Sec. 2483, Civ. C. 1895; re-en. Sec. 5156, Rev. C. 1907; re-en. Sec. 7659, R.C.M. 1921; Cal. Civ. C. Sec. 1847; Field Civ. C. Sec. 930; re-en. Sec. 7659, R.C.M. 1935; R.C.M. 1947, 20-212.

Part 4
Deposit for Hire — Storage

70-6-401. Applicability — Uniform Commercial Code. The provisions of this part apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 20-314 by Sec. 11-116, Ch. 264, L. 1963; R.C.M. 1947, 20-314.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

70-6-402. Deposit for hire defined. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

History: En. Sec. 2490, Civ. C. 1895; re-en. Sec. 5157, Rev. C. 1907; re-en. Sec. 7660, R.C.M. 1921; Cal. Civ. C. Sec. 1851; Field Civ. C. Sec. 931; re-en. Sec. 7660, R.C.M. 1935; R.C.M. 1947, 20-301.

Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

70-6-403. Degree of care required of depositary for hire. A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

History: En. Sec. 2491, Civ. C. 1895; re-en. Sec. 5158, Rev. C. 1907; re-en. Sec. 7661, R.C.M. 1921; Cal. Civ. C. Sec. 1852; Field Civ. C. Sec. 932; re-en. Sec. 7661, R.C.M. 1935; R.C.M. 1947, 20-302.

70-6-404. Rate of compensation for fraction of week or half month. In the absence of a different agreement or usage, a depositary for hire is entitled to 1 week's hire for the sustenance and shelter of living animals during any fraction of a week and to half a month's hire for the storage of any other property during any fraction of a half month.

History: En. Sec. 2492, Civ. C. 1895; re-en. Sec. 5159, Rev. C. 1907; re-en. Sec. 7662, R.C.M. 1921; Cal. Civ. C. Sec. 1853; Field Civ. C. Sec. 933; re-en. Sec. 7662, R.C.M. 1935; R.C.M. 1947, 20-303.

70-6-405. Termination of deposit. (1) In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time and by the depositary upon a reasonable notice.

(2) Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

History: En. Secs. 2493, 2494, Civ. C. 1895; re-en. Secs. 5160, 5161, Rev. C. 1907; re-en. Secs. 7663, 7664, R.C.M. 1921; Cal. Civ. C. Secs. 1854, 1855; Field Civ. C. Secs. 934, 935; re-en. Secs. 7663, 7664, R.C.M. 1935; R.C.M. 1947, 20-304, 20-305.

70-6-406 through 70-6-410 reserved.

70-6-411. Sale to pay costs of storage. (1) Any storage or commission merchant receiving personal property from any person for storage and any common carrier of goods by whom any personal property is lawfully stored before or after the transportation thereof may, after keeping the same in store for 90 days, in default of the payment of the storage or freight money on such personal property, advertise and sell the same at public auction to the highest bidder for cash, first giving notice of the time, the terms, and place of sale and a description of the property to be sold by publication in some newspaper published in the county where the property may be stored. Said notice shall be published at least once a week for 4 weeks next previous to the day of sale and shall specify the amount due on the property to be sold. When a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon.

(2) Should there be no newspaper published in the county where such property is stored, then notice may be given in the newspaper published nearest thereto in some other county in this state.

(3) But no more of such property shall be sold than is necessary to pay the charges due, together with the costs.

History: En. Sec. 1, p. 544, Cod. Stat. 1871; re-en. Sec. 1179, 5th Div. Rev. Stat. 1879; re-en. Sec. 1983, 5th Div. Comp. Stat. 1887; amd. Sec. 2495, Civ. C. 1895; amd. Sec. 1, p. 153, L. 1901; re-en. Sec. 5162, Rev. C. 1907; re-en. Sec. 7665, R.C.M. 1921; Cal. Civ. C. Secs. 1856, 1857; re-en. Sec. 7665, R.C.M. 1935; R.C.M. 1947, 20-306.

Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Sale of unclaimed baggage — notice, 70-9-501.

70-6-412. Application of proceeds of sale. (1) After paying the expenses of sale, including the publication of notice, the storage or commission merchant or the carrier shall be authorized, out of the proceeds arising from the sale of the property, to retain the amount due him for storage or freight money, or both, due upon any such property, and the excess, if any, must be paid over to the person entitled to the proceeds thereof.

(2) All sales under this part shall vest the title to the property sold in the purchaser thereof.

History: En. Sec. 3, p. 545, Cod. Stat. 1871; re-en. Sec. 1181, 5th Div. Rev. Stat. 1879; re-en. Sec. 1895, 5th Div. Comp. Stat. 1887; amd. Sec. 2496, Civ. C. 1895; re-en. Sec. 2, p. 153, L. 1901; re-en. Sec. 5163, Rev. C. 1907; re-en. Sec. 7666, R.C.M. 1921; re-en. Sec. 7666, R.C.M. 1935; R.C.M. 1947, 20-307.

70-6-413 through 70-6-419 reserved.

70-6-420. Default in payment of storage space rental fees — notice — sale of contents. (1) A person who rents storage space to another may sell at public auction the contents of the storage space if the owner of the contents is more than 30 days in default in paying rental fees on the space.

(2) At the expiration of the period of default provided for in subsection (1), the person renting the storage space shall send written notice by certified mail to the last-known address of the owner of the contents that he has 30 days from the date of the certified letter to pay the past due rental fees and to claim the contents of the storage space or the contents will be sold at public auction. The notice must contain the date, time, and place of the auction if the past due rental fees are not paid. If the certified notice is returned undelivered, notice must be given as provided in Rule 4 of the Montana Rules of Civil Procedure.

(3) Prior to an auction provided for in subsection (1), notice of the date, time, place, terms, and description of the property must be published in a newspaper in the county in which the property to be sold is located. The notice must be published once a week for 2 weeks prior to the day of the sale. If there is no newspaper published in the county in which the property to be sold is located, then the notice may be published in a newspaper of general circulation in the county.

(4) (a) Proceeds of the auction must first be applied to the costs of the sale, then to the unpaid storage rental fees, and the excess, if any, must be paid to the owner. If the owner or the person entitled to the proceeds cannot be located, the proceeds escheat to the state as provided in Title 72, chapter 14.

(b) All sales under this section vest title to the property sold in the purchaser of the property.

History: En. Sec. 1, Ch. 472, L. 1991.

Cross-References

Procedure for state acquisition of escheatable property, Title 72, ch. 14, part 2.

Part 5

Innkeepers

70-6-501. Innkeeper's liability as to property of guests — dollar limitation. (1) An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom he brought into the inn.

(2) The liability provided for in subsection (1) may not exceed $500 for all personal property of each registered guest unless the innkeeper consents in

writing with the guest to assume a greater liability. An innkeeper whose liability is so limited shall notify the guest at the time of registration, in writing, that this limitation applies.

History: En. Sec. 2500, Civ. C. 1895; re-en. Sec. 5164, Rev. C. 1907; re-en. Sec. 7673, R.C.M. 1921; Cal. Civ. C. Sec. 1859; Field Civ. C. Sec. 936; re-en. Sec. 7673, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1977; R.C.M. 1947, 34-101.

70-6-502. No liability without negligence. No hotelkeeper or innkeeper shall be liable to any guest for the loss of wearing apparel, goods, or personal effects where it shall appear that such loss occurred without the fault or negligence of such hotelkeeper or his employees.

History: En. Sec. 2510, Civ. C. 1895; re-en. Sec. 5174, Rev. C. 1907; re-en. Sec. 7681, R.C.M. 1921; re-en. Sec. 7681, R.C.M. 1935; R.C.M. 1947, 34-109.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

70-6-503. Loss or damage by fire — liability for negligence. All innkeepers or hotelkeepers coming within the provisions of this part shall be liable for loss of or damage to any baggage or other property of their guests caused by fire in every case where such loss or damage is the result of the negligence of such keepers or their servants.

History: En. Sec. 2509, Civ. C. 1895; re-en. Sec. 5173, Rev. C. 1907; re-en. Sec. 7680, R.C.M. 1921; re-en. Sec. 7680, R.C.M. 1935; R.C.M. 1947, 34-108.

70-6-504. How exempted from liability — safe. If an innkeeper keeps a fireproof safe and gives notice to a guest, either personally or by placing a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe and will not be liable for money, jewelry, documents, or other articles of value and small compass unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of or injury to such articles not deposited with him and not required by the guest for present use.

History: En. Sec. 2501, Civ. C. 1895; re-en. Sec. 5165, Rev. C. 1907; re-en. Sec. 7674, R.C.M. 1921; Cal. Civ. C. Sec. 1860; Field. Civ. C. Sec. 937; re-en. Sec. 7674, R.C.M. 1935; R.C.M. 1947, 34-102; amd. Sec. 3, Ch. 115, L. 1979.

70-6-505. Storage of property in outbuilding — nonliability. No innkeeper shall be liable for the loss or destruction by fire of the property received by him from a guest, stored or being, with the knowledge of such guest, in a barn or other outbuilding, where it shall appear that such loss or destruction is the work of an incendiary and occurred without the fault or negligence of such innkeeper or his servants.

History: En. Sec. 2508, Civ. C. 1895; re-en. Sec. 5172, Rev. C. 1907; re-en. Sec. 7679, R.C.M. 1921; re-en. Sec. 7679, R.C.M. 1935; R.C.M. 1947, 34-107.

70-6-506 through 70-6-510 reserved.

70-6-511. Eviction of guests. (1) An innkeeper may evict a guest of a hotel, as defined in 50-51-102, who refuses or has otherwise failed to pay the bill when due. Before evicting a guest, the innkeeper shall demand payment of the bill and shall ask the guest to vacate the premises. If the guest does not pay the bill or leave following these requests, the innkeeper may lock the door to the guest's room, remove the guest's baggage and other personal property, or evict the guest by any other peaceful means. The innkeeper may hold the guest's baggage and other personal property but is subject to liability as provided in 70-6-501.

(2) An innkeeper may also evict a person, whether or not the person is a guest of the hotel, who:

(a) is under the influence of alcohol, drugs, or any other intoxicating substance and acts in a disorderly fashion so as to disturb the peace of other guests or is not in compliance with state liquor laws;

(b) acts in a disorderly fashion so as to disturb the peace of other guests;

(c) seeks to use the hotel for an unlawful purpose;

(d) seeks to bring into the hotel:

(i) an unlawfully possessed firearm; or

(ii) something, including an explosive or a hazardous or toxic substance, that it is unlawful to possess and that may be dangerous to other persons;

(e) destroys, damages, defaces, or threatens harm to hotel property or guests;

(f) causes or permits persons to exceed the maximum allowable occupancy of a hotel room as established by the innkeeper;

(g) refuses to abide by reasonable standards or policies established by the innkeeper for operation and management of the hotel.

History: En. Sec. 1, Ch. 335, L. 1995.

Cross-References

Roominghouse and transient guest defined, 50-51-102.

70-6-512. Innkeeper's responsibilities — limits. (1) An innkeeper may not be required to provide accommodations, facilities, or privileges of a hotel, as defined in 50-51-102, to a person who:

(a) is unwilling or unable to pay for the accommodations and services of the hotel. An innkeeper may require a prospective guest to demonstrate the ability to pay for the accommodations and services by paying a damage deposit in cash or with an accepted credit card.

(b) the innkeeper reasonably believes to be under the influence of alcohol, drugs, or another intoxicating substance or who acts in a disorderly fashion so as to disturb the peace of other guests;

(c) the innkeeper reasonably believes seeks to bring into the hotel :

(i) an unlawfully possessed firearm; or

(ii) something, including an explosive or a hazardous or toxic substance, that it is unlawful to possess and that may be dangerous to other persons;

(d) destroys, damages, defaces, or threatens harm to hotel property or guests;

(e) refuses to abide by reasonable standards or policies established by the innkeeper for operation and management of the hotel; or

(f) causes or permits persons to exceed the maximum allowable occupancy of a hotel room as established by the innkeeper.

(2) This section does not relieve an innkeeper from the responsibility to not engage in unlawful discriminatory practices as defined in 49-2-304 and other provisions of Title 49, chapter 2.

History: En. Sec. 2, Ch. 335, L. 1995.

70-6-513. Consumption or possession of alcohol — civil liability — licensure protection. The provisions of 27-1-710 apply to an innkeeper. A license to serve beer, wine, or liquor that is issued to an innkeeper may not be suspended, revoked, or refused renewal because of the unlawful consumption or possession of alcohol by a guest or occupant except under the provisions of Title 16, chapter 4.

History: **En. Sec. 3, Ch. 335, L. 1995.**

70-6-514. Liability of parent or guardian for minor's damage to public accommodation. If a minor willfully defaces or damages hotel property, the parent or guardian of the minor is liable for the cost of repair or replacement as provided in 40-6-237 and 40-6-238.

History: **En. Sec. 4, Ch. 335, L. 1995.**

CHAPTER 7

LOANS FOR USE OR EXCHANGE PERSONAL PROPERTY

Part 1 — Loan for Use

70-7-101. Optional loan — use or exchange — applicability of entire chapter.
70-7-102. Loan for use defined.
70-7-103. Title not transferred — increase.
70-7-104. Care required of borrower generally.
70-7-105. Borrower of animal — care required.
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70-7-107. Borrower to repair injuries.
70-7-108. Use of thing lent — what permitted.
70-7-109. Relending forbidden.
70-7-110. Who to bear expenses.
70-7-111. Lender liable for concealed defects.
70-7-112. Right of lender to require return — indemnification of borrower.
70-7-113. When returnable without demand.
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Part 2 — Loan for Exchange

70-7-201. Certain sections of previous part applicable.
70-7-202. Loan for exchange defined.
70-7-203. Title to property lent — expenses — increase.
70-7-204. Contract not to be modified by lender.

Part 1

Loan for Use

70-7-101. Optional loan — use or exchange — applicability of entire chapter. A loan which the borrower is allowed by the lender to treat as a loan for use or for exchange, at his option, is subject to all of the provisions of this chapter.

History: **En. Sec. 2571, Civ. C. 1895; re-en. Sec. 5202, Rev. C. 1907; re-en. Sec. 7716, R.C.M. 1921; Cal. Civ. C. Sec. 1903; Field Civ. C. Sec. 962; re-en. Sec. 7716, R.C.M. 1935; R.C.M. 1947, 47-115.**

70-7-102. Loan for use defined. A loan for use is a contract by which one gives to another the temporary use and possession of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

History: En. Sec. 2550, Civ. C. 1895; re-en. Sec. 5188, Rev. C. 1907; re-en. Sec. 7702, R.C.M. 1921; Cal. Civ. C. Sec. 1884; Field Civ. C. Sec. 948; re-en. Sec. 7702, R.C.M. 1935; R.C.M. 1947, 47-101.

Cross-References

Retail installment sales, Title 31, ch. 1, part 2.

70-7-103. Title not transferred — increase. A loan for use does not transfer the title to the thing, and all its increase during the period of the loan belongs to the lender.

History: En. Sec. 2551, Civ. C. 1895; re-en. Sec. 5189, Rev. C. 1907; re-en. Sec. 7703, R.C.M. 1921; Cal. Civ. C. Sec. 1885; Field Civ. C. Sec. 949; re-en. Sec. 7703, R.C.M. 1935; R.C.M. 1947, 47-102.

70-7-104. Care required of borrower generally. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

History: En. Sec. 2552, Civ. C. 1895; re-en. Sec. 5190, Rev. C. 1907; re-en. Sec. 7704, R.C.M. 1921; Cal. Civ. C. Sec. 1886; Field Civ. C. Sec. 950; re-en. Sec. 7704, R.C.M. 1935; R.C.M. 1947, 47-103.

70-7-105. Borrower of animal — care required. One who borrows a living animal for use must treat it with great kindness and provide everything necessary and suitable for it.

History: En. Sec. 2553, Civ. C. 1895; re-en. Sec. 5191, Rev. C. 1907; re-en. Sec. 7705, R.C.M. 1921; Cal. Civ. C. Sec. 1887; Field Civ. C. Sec. 951; re-en. Sec. 7705, R.C.M. 1935; R.C.M. 1947, 47-104.

70-7-106. Skill required of borrower. A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

History: En. Sec. 2554, Civ. C. 1895; re-en. Sec. 5192, Rev. C. 1907; re-en. Sec. 7706, R.C.M. 1921; Cal. Civ. C. Sec. 1888; Field Civ. C. Sec. 952; re-en. Sec. 7706, R.C.M. 1935; R.C.M. 1947, 47-105.

70-7-107. Borrower to repair injuries. A borrower for use must repair all deteriorations or injuries to the thing lent which are occasioned by his negligence, however slight.

History: En. Sec. 2555, Civ. C. 1895; re-en. Sec. 5193, Rev. C. 1907; re-en. Sec. 7707, R.C.M. 1921; Cal. Civ. C. Sec. 1889; Field Civ. C. Sec. 953; re-en. Sec. 7707, R.C.M. 1935; R.C.M. 1947, 47-106.

70-7-108. Use of thing lent — what permitted. The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

History: En. Sec. 2556, Civ. C. 1895; re-en. Sec. 5194, Rev. C. 1907; re-en. Sec. 7708, R.C.M. 1921; Cal. Civ. C. Sec. 1890; Field Civ. C. Sec. 954; re-en. Sec. 7708, R.C.M. 1935; R.C.M. 1947, 47-107.

70-7-109. Relending forbidden. The borrower of a thing for use must not part with it to a third person without the consent of the lender.

History: En. Sec. 2557, Civ. C. 1895; re-en. Sec. 5195, Rev. C. 1907; re-en. Sec. 7709, R.C.M. 1921; Cal. Civ. C. Sec. 1891; Field Civ. C. Sec. 955; re-en. Sec. 7709, R.C.M. 1935; R.C.M. 1947, 47-108.

70-7-110. Who to bear expenses. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

History: En. Sec. 2558, Civ. C. 1895; re-en. Sec. 5196, Rev. C. 1907; re-en. Sec. 7710, R.C.M. 1921; Cal. Civ. C. Sec. 1892; Field Civ. C. Sec. 956; re-en. Sec. 7710, R.C.M. 1935; R.C.M. 1947, 47-109.

70-7-111. Lender liable for concealed defects. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it which he knew at the time of lending and concealed from the borrower.

History: En. Sec. 2559, Civ. C. 1895; re-en. Sec. 5197, Rev. C. 1907; re-en. Sec. 7711, R.C.M. 1921; Cal. Civ. C. Sec. 1893; Field Civ. C. Sec. 957; re-en. Sec. 7711, R.C.M. 1935; R.C.M. 1947, 47-110.

70-7-112. Right of lender to require return — indemnification of borrower. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if on the faith of such an agreement the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss if he compels such return, the borrower not having in any manner violated his duty.

History: En. Sec. 2560, Civ. C. 1895; re-en. Sec. 5198, Rev. C. 1907; re-en. Sec. 7712, R.C.M. 1921; Cal. Civ. C. Sec. 1894; Field Civ. C. Sec. 958; re-en. Sec. 7712, R.C.M. 1935; R.C.M. 1947, 47-111.

70-7-113. When returnable without demand. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand as soon as the time has expired or the purpose has been accomplished. In other cases it need not be returned until demanded.

History: En. Sec. 2561, Civ. C. 1895; re-en. Sec. 5199, Rev. C. 1907; re-en. Sec. 7713, R.C.M. 1921; Cal. Civ. C. Sec. 1895; Field Civ. C. Sec. 959; re-en. Sec. 7713, R.C.M. 1935; R.C.M. 1947, 47-112.

70-7-114. Place of return. The borrower of a thing for use must return it to the lender at the place contemplated by the parties at the time of lending or, if no particular place was so contemplated by them, then at the place where it was at that time.

History: En. Sec. 2562, Civ. C. 1895; re-en. Sec. 5200, Rev. C. 1907; re-en. Sec. 7714, R.C.M. 1921; Cal. Civ. C. Sec. 1896; Field Civ. C. Sec. 960; re-en. Sec. 7714, R.C.M. 1935; R.C.M. 1947, 47-113.

Part 2

Loan for Exchange

70-7-201. Certain sections of previous part applicable. Sections 70-7-111, 70-7-112, and 70-7-113 apply to a loan for exchange.

History: En. Sec. 2574, Civ. C. 1895; re-en. Sec. 5205, Rev. C. 1907; re-en. Sec. 7719, R.C.M. 1921; Cal. Civ. C. Sec. 1906; Field Civ. C. Sec. 965; re-en. Sec. 7719, R.C.M. 1935; R.C.M. 1947, 47-118.

70-7-202. Loan for exchange defined. A loan for exchange is a contract by which one delivers personal property to another and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

History: En. Sec. 2570, Civ. C. 1895; re-en. Sec. 5201, Rev. C. 1907; re-en. Sec. 7715, R.C.M. 1921; Cal. Civ. C. Sec. 1902; Field Civ. C. Sec. 961; re-en. Sec. 7715, R.C.M. 1935; R.C.M. 1947, 47-114.

70-7-203. Title to property lent — expenses — increase. By a loan for exchange, the title to the thing lent is transferred to the borrower, and he must bear all its expenses and is entitled to all its increase.

History: En. Sec. 2572, Civ. C. 1895; re-en. Sec. 5203, Rev. C. 1907; re-en. Sec. 7717, R.C.M. 1921; Cal. Civ. C. Sec. 1904; re-en. Sec. 7717, R.C.M. 1935; R.C.M. 1947, 47-116.

70-7-204. Contract not to be modified by lender. A lender for exchange cannot require the borrower to fulfill his obligations at a time or in a manner different from that which was originally agreed upon.

History: En. Sec. 2573, Civ. C. 1895; re-en. Sec. 5204, Rev. C. 1907; re-en. Sec. 7718, R.C.M. 1921; Cal. Civ. C. Sec. 1905; Field Civ. C. Sec. 964; re-en. Sec. 7718, R.C.M. 1935; R.C.M. 1947, 47-117.

CHAPTER 8

RENTALS OF PERSONAL PROPERTY

Part 1 — General Provisions
(Repealed. Sec. 230, Ch. 410, L. 1991)

Part 2 — Rental of Ships

70-8-201. Contract for letting of ship.

Part 1

General Provisions (Repealed. Sec. 230, Ch. 410, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

70-8-101. En. Sec. 2640, Civ. C. 1895; re-en. Sec. 5236, Rev. C. 1907; re-en. Sec. 7751, R.C.M. 1921; Cal. Civ. C. Sec. 1955; Field Civ. C. Sec. 999; re-en. Sec. 7751, R.C.M. 1935; R.C.M. 1947, 42-211.

70-8-102. En. Sec. 2641, Civ. C. 1895; re-en. Sec. 5237, Rev. C. 1907; re-en. Sec. 7752, R.C.M. 1921; Cal. Civ. C. Sec. 1956; Field Civ. C. Sec. 1000; re-en. Sec. 7752, R.C.M. 1935; R.C.M. 1947, 42-212.

70-8-103. En. Sec. 2642, Civ. C. 1895; re-en. Sec. 5238, Rev. C. 1907; re-en. Sec. 7753, R.C.M. 1921; Cal. Civ. C. Sec. 1957; Field Civ. C. Sec. 1001; re-en. Sec. 7753, R.C.M. 1935; R.C.M. 1947, 42-213.

70-8-104. En. Sec. 2643, Civ. C. 1895; re-en. Sec. 5239, Rev. C. 1907; re-en. Sec. 7754, R.C.M. 1921; Cal. Civ. C. Sec. 1958; Field Civ. C. Sec. 1002; re-en. Sec. 7754, R.C.M. 1935; R.C.M. 1947, 42-214.

Part 2

Rental of Ships

70-8-201. Contract for letting of ship. The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer.

History: **En. Sec. 2644, Civ. C. 1895; re-en. Sec. 5240, Rev. C. 1907; re-en. Sec. 7755, R.C.M. 1921; Cal. Civ. C. Sec. 1959; Field Civ. C. Sec. 1003; re-en. Sec. 7755, R.C.M. 1935; R.C.M. 1947, 42-215.**

CHAPTER 9

DISPOSITION OF UNCLAIMED PROPERTY

Part 1 — General Provisions (Repealed)

70-9-101. Repealed.
70-9-102. Repealed.
70-9-103. Repealed.
70-9-104. Repealed.
70-9-105. Repealed.
70-9-106. Repealed.
70-9-107 through 70-9-110 reserved.
70-9-111. Repealed.
70-9-112 through 70-9-120 reserved.
70-9-121. Repealed.
70-9-122. Repealed.

Part 2 — Presumption of Abandonment Kinds of Property (Repealed. Sec. 35, Ch. 124, L. 1997)

Part 3 — Procedure (Repealed)

70-9-301 through 70-9-312. Repealed.
70-9-313. Repealed.
70-9-314. Repealed.
70-9-315. Repealed.
70-9-316. Repealed.

Part 4 — Common Carriers, Commission Merchants, and Warehousemen

70-9-401. Applicability — Uniform Commercial Code.
70-9-402. Storage of unclaimed property.
70-9-403. Property unclaimed within 90 days to be sold — notice — surplus.
70-9-404. Surplus proceeds unclaimed — disposition.
70-9-405. Responsibility of carrier and bailee after storage.
70-9-406. Sale of property upon which advances are due.
70-9-407. Fees of officers.

Part 5 — Innkeepers

70-9-501. Sale of unclaimed baggage — notice.
70-9-502. Disposition of surplus proceeds.

Part 6 — Retail Launderers and Dry Cleaners

70-9-601. Disposal of property unclaimed within 180 days — notice — maintenance of records.

Part 7 — Foreign Capital Depositories

70-9-701. Abandoned capital — disposition — escheatment.

Part 8 — Uniform Unclaimed Property Act

70-9-801. Short title.
70-9-802. Definitions.
70-9-803. Presumptions of abandonment.
70-9-804. Contents of safe deposit box or other safekeeping depository.
70-9-805. Rules for taking custody.
70-9-806. Dormancy charge.
70-9-807. Burden of proof as to property evidenced by record of check or draft.
70-9-808. Report of abandoned property.
70-9-809. Payment or delivery of abandoned property.
70-9-810. Notice and publication of lists of abandoned property.
70-9-811. Custody by state — recovery by holder — defense of holder.
70-9-812. Public sale of abandoned property.
70-9-813. Deposit of funds.
70-9-814. Claim of another state to recover property.
70-9-815. Filing claim with administrator — handling of claims by administrator.
70-9-816. Action to establish claim.
70-9-817. Election to take payment or delivery.
70-9-818. Destruction or disposition of property having no substantial commercial value — immunity from liability.
70-9-819. Periods of limitation.
70-9-820. Requests for reports and examination of records.
70-9-821. Retention of records.
70-9-822. Enforcement.
70-9-823. Interstate agreements and cooperation — joint and reciprocal actions with other states.
70-9-824. Interest and penalties.
70-9-825. Agreement to locate property.
70-9-826. Foreign transactions.
70-9-827. Transitional provisions.
70-9-828. Rules.
70-9-829. Uniformity of application and construction.

Chapter Cross-References

State warrants — presentation and cancellation — failure to claim payment, 17-8-303.

Part 1
General Provisions (Repealed)

70-9-101. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 30, Ch. 244, L. 1963; R.C.M. 1947, 67-2230; amd. Sec. 1, Ch. 269, L. 1983.

70-9-102. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 1, Ch. 244, L. 1963; R.C.M. 1947, 67-2201; amd. Sec. 2, Ch. 269, L. 1983.

70-9-103. Repealed. Sec. 13, Ch. 269, L. 1983.

History: En. Secs. 10, 27, Ch. 244, L. 1963; R.C.M. 1947, 67-2210, 67-2227.

70-9-104. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 29, Ch. 244, L. 1963; R.C.M. 1947, 67-2229.

70-9-105. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 26, Ch. 244, L. 1963; amd. Sec. 16, Ch. 216, L. 1971; amd. Sec. 39, Ch. 391, L. 1973; R.C.M. 1947, 67-2226.

70-9-106. Repealed. Sec. 35, Ch. 124, L. 1997.
History: En. Sec. 12, Ch. 630, L. 1985; amd. Sec. 1, Ch. 5, L. 1987.

70-9-107 through 70-9-110 reserved.

70-9-111. Repealed. Sec. 35, Ch. 124, L. 1997.
History: En. Sec. 3, Ch. 269, L. 1983.

70-9-112 through 70-9-120 reserved.

70-9-121. Repealed. Sec. 35, Ch. 124, L. 1997.
History: En. Sec. 11, Ch. 269, L. 1983.

70-9-122. Repealed. Sec. 35, Ch. 124, L. 1997.
History: En. Sec. 12, Ch. 269, L. 1983.

Part 2

Presumption of Abandonment Kinds of Property

(Repealed. Sec. 35, Ch. 124, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

70-9-201. En. Sec. 2, Ch. 244, L. 1963; amd. Sec. 1, Ch. 226, L. 1967; R.C.M. 1947, 67-2202; amd. Sec. 2, Ch. 5, L. 1987; amd. Sec. 1, Ch. 143, L. 1989.

70-9-202. En. Sec. 3, Ch. 244, L. 1963; R.C.M. 1947, 67-2203; amd. Sec. 3, Ch. 5, L. 1987.

70-9-203. En. Sec. 4, Ch. 244, L. 1963; R.C.M. 1947, 67-2204; amd. Sec. 4, Ch. 5, L. 1987; amd. Sec. 2, Ch. 263, L. 1993.

70-9-204. En. Sec. 5, Ch. 244, L. 1963; R.C.M. 1947, 67-2205; amd. Sec. 1, Ch. 575, L. 1979; amd. Sec. 5, Ch. 5, L. 1987.

70-9-205. En. Sec. 6, Ch. 244, L. 1963; R.C.M. 1947, 67-2206; amd. Sec. 2, Ch. 575, L. 1979.

70-9-206. En. Sec. 7, Ch. 244, L. 1963; R.C.M. 1947, 67-2207; amd. Sec. 6, Ch. 5, L. 1987.

70-9-207. En. Sec. 8, Ch. 244, L. 1963; R.C.M. 1947, 67-2208; amd. Sec. 3, Ch. 575, L. 1979; amd. Sec. 7, Ch. 5, L. 1987.

70-9-208. En. Sec. 9, Ch. 244, L. 1963; R.C.M. 1947, 67-2209; amd. Sec. 8, Ch. 5, L. 1987.

70-9-209. En. Sec. 4, Ch. 269, L. 1983; amd. Sec. 9, Ch. 5, L. 1987.

70-9-210. En. Sec. 1, Ch. 654, L. 1991.

Part 3

Procedure

(Repealed)

70-9-301 through 70-9-312. Repealed. Sec. 35, Ch. 124, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

70-9-301. En. Sec. 11, Ch. 244, L. 1963; amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Ch. 226, L. 1967; amd. Sec. 1, Ch. 216, L. 1971; amd. Sec. 24, Ch. 391, L. 1973; amd. Sec. 1, Ch. 195, L. 1977; R.C.M. 1947, 67-2211(1) thru (6); amd. Sec. 6, Ch. 269, L. 1983; amd. Sec. 10, Ch. 5, L. 1987; amd. Sec. 2, Ch. 654, L. 1991; amd. Sec. 3, Ch. 263, L. 1993.

70-9-302. En. Sec. 12, Ch. 244, L. 1963; amd. Sec. 3, Ch. 226, L. 1967; amd. Sec. 2, Ch. 216, L. 1971; amd. Sec. 25, Ch. 391, L. 1973; R.C.M. 1947, 67-2212; amd. Sec. 4, Ch. 115, L. 1979; amd. Sec. 4, Ch. 575, L. 1979; amd. Sec. 7, Ch. 269, L. 1983; amd. Sec. 3, Ch. 654, L. 1991.

70-9-303. En. Sec. 13, Ch. 244, L. 1963; amd. Sec. 4, Ch. 226, L. 1967; amd. Sec. 3, Ch. 216, L. 1971; amd. Sec. 26, Ch. 391, L. 1973; R.C.M. 1947, 67-2213; (2), (3)En. Sec. 5, Ch. 269, L. 1983; amd. Sec. 4, Ch. 654, L. 1991.

70-9-304. En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973; R.C.M. 1947, 67-2214(part); amd. Sec. 5, Ch. 575, L. 1979.

70-9-305. En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973; R.C.M. 1947, 67-2214(part).

70-9-306. En. Sec. 15, Ch. 244, L. 1963; amd. Sec. 5, Ch. 216, L. 1971; amd. Sec. 28, Ch. 391, L. 1973; R.C.M. 1947, 67-2215.

70-9-307. En. Sec. 16, Ch. 244, L. 1963; amd. Sec. 6, Ch. 216, L. 1971; amd. Sec. 29, Ch. 391, L. 1973; R.C.M. 1947, 67-2216; amd. Sec. 8, Ch. 269, L. 1983; amd. Sec. 5, Ch. 654, L. 1991.

70-9-308. En. Sec. 17, Ch. 244, L. 1963; amd. Sec. 7, Ch. 216, L. 1971; amd. Sec. 30, Ch. 391, L. 1973; R.C.M. 1947, 67-2217; amd. Sec. 6, Ch. 575, L. 1979.

70-9-309. En. Sec. 18, Ch. 244, L. 1963; amd. Sec. 8, Ch. 216, L. 1971; amd. Sec. 31, Ch. 391, L. 1973; R.C.M. 1947, 67-2218; amd. Sec. 30, Ch. 281, L. 1983; amd. Sec. 4, Ch. 263, L. 1993; amd. Sec. 3, Ch. 5, L. 1995.

70-9-310. En. Sec. 19, Ch. 244, L. 1963; amd. Sec. 9, Ch. 216, L. 1971; amd. Sec. 32, Ch. 391, L. 1973; amd. Sec. 2, Ch. 195, L. 1977; R.C.M. 1947, 67-2219.

70-9-311. En. Sec. 20, Ch. 244, L. 1963; amd. Sec. 10, Ch. 216, L. 1971; amd. Sec. 33, Ch. 391, L. 1973; amd. Sec. 9, Ch. 155, L. 1977; R.C.M. 1947, 67-2220.

70-9-312. En. Sec. 21, Ch. 244, L. 1963; amd. Sec. 11, Ch. 216, L. 1971; amd. Sec. 34, Ch. 391, L. 1973; amd. Sec. 10, Ch. 155, L. 1977; R.C.M. 1947, 67-2221.

70-9-313. Repealed. Sec. 8, Ch. 654, L. 1991.

History: En. Sec. 22, Ch. 244, L. 1963; amd. Sec. 12, Ch. 216, L. 1971; amd. Sec. 35, Ch. 391, L. 1973; R.C.M. 1947, 67-2222.

70-9-314. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 23, Ch. 244, L. 1963; amd. Sec. 13, Ch. 216, L. 1971; amd. Sec. 36, Ch. 391, L. 1973; R.C.M. 1947, 67-2223; amd. Sec. 1, Ch. 128, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 9, Ch. 269, L. 1983; amd. Sec. 1, Ch. 14, L. 1989.

70-9-315. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 24, Ch. 244, L. 1963; amd. Sec. 14, Ch. 216, L. 1971; amd. Sec. 37, Ch. 391, L. 1973; R.C.M. 1947, 67-2224.

70-9-316. Repealed. Sec. 35, Ch. 124, L. 1997.

History: En. Sec. 25, Ch. 244, L. 1963; amd. Sec. 15, Ch. 216, L. 1971; amd. Sec. 38, Ch. 391, L. 1973; R.C.M. 1947, 67-2225; amd. Sec. 10, Ch. 269, L. 1983.

Part 4

Common Carriers, Commission Merchants, and Warehousemen

70-9-401. Applicability — Uniform Commercial Code. The provisions of this part apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 20-314 by Sec. 11-116, Ch. 264, L. 1963; R.C.M. 1947, 20-314.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

70-9-402. Storage of unclaimed property. When any goods, merchandise, or other property has been received by any railroad or express company or other common carrier, commission merchants, or warehousemen for transportation or safekeeping and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, or warehouseman may hold or store the same with some responsible person until the freight and all just and reasonable charges are paid.

History: En. Sec. 2920, Pol. C. 1895; re-en. Sec. 2003, Rev. C. 1907; re-en. Sec. 7667, R.C.M. 1921; Cal. Pol. C. Sec. 3152; re-en. Sec. 7667, R.C.M. 1935; R.C.M. 1947, 20-308.

70-9-403. Property unclaimed within 90 days to be sold — notice — surplus. (1) If no person calls for the property within 90 days from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, or warehouseman may sell such property or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given 20 days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper 10 days (or if in a weekly paper, 4 weeks), published where such sale is to take place.

(2) If any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor or within 60 days after the sale.

History: **En. Sec. 2921, Pol. C. 1895; re-en. Sec. 2004, Rev. C. 1907; re-en. Sec. 7668, R.C.M. 1921; Cal. Pol. C. Sec. 3153; re-en. Sec. 7668, R.C.M. 1935; R.C.M. 1947, 20-309.**

70-9-404. Surplus proceeds unclaimed — disposition. If the owner or his agent fails to demand such surplus within 60 days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

History: **En. Sec. 2922, Pol. C. 1895; re-en. Sec. 2005, Rev. C. 1907; re-en. Sec. 7669, R.C.M. 1921; Cal. Pol. C. Sec. 3154; re-en. Sec. 7669, R.C.M. 1935; R.C.M. 1947, 20-310.**

70-9-405. Responsibility of carrier and bailee after storage. After the storage of goods, merchandise, or property as provided in this part, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof unless the same results from his negligence or want of proper care.

History: **En. Sec. 2923, Pol. C. 1895; re-en. Sec. 2006, Rev. C. 1907; re-en. Sec. 7670, R.C.M. 1921; Cal. Pol. Sec. 3155; re-en. Sec. 7670, R.C.M. 1935; R.C.M. 1947, 20-311.**

70-9-406. Sale of property upon which advances are due. When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property and makes advances thereon, either to the owner or for freight and charges, he may, if the same is not paid to him within 90 days from the date of such advances, cause the produce, merchandise, or property on which the advances were made to be advertised and sold as provided in this part.

History: **En. Sec. 2924, Pol. C. 1895; re-en. Sec. 2007, Rev. C. 1907; re-en. Sec. 7671, R.C.M. 1921; Cal. Pol. C. Sec. 3156; re-en. Sec. 7671, R.C.M. 1935; R.C.M. 1947, 20-312.**

70-9-407. Fees of officers. The fees of officers under this part are the same as allowed for similar services in other cases provided in this code to be paid by the taker-up or finder and recovered of the owner.

History: **En. Sec. 2925, Pol. C. 1895; re-en. Sec. 2008, Rev. C. 1907; re-en. Sec. 7672, R.C.M. 1921; Cal. Pol. C. Sec. 3157; re-en. Sec. 7672, R.C.M. 1935; R.C.M. 1947, 20-313.**

Part 5
Innkeepers

Part Cross-References

Performance to one of several joint creditors, 28-1-1103.

70-9-501. Sale of unclaimed baggage — notice. (1) Whenever any trunk, carpetbag, valise, box, bundle, or other baggage comes into the possession of the keeper of any hotel, inn, boardinghouse, or lodginghouse, as such, and remains unclaimed for the period of 6 months, such keeper may proceed to sell the same at public auction and out of the proceeds of such sale may retain the charges for storage, if any, and the expense of advertising and sale thereof.

(2) But no such sale shall be made until the expiration of 4 weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, or place in which said hotel, inn, boardinghouse, or lodginghouse is situated.

(3) Said notice shall be published once a week for 4 successive weeks in some newspaper, daily or weekly, of general circulation and shall contain:

(a) a description of each trunk, carpetbag, valise, box, bundle, or other baggage, as near as may be;

(b) the name of the owner, if known;

(c) the name of said keeper and the time and place of sale.

(4) The expenses incurred for advertising shall be a lien upon such trunk, carpetbag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property or thing or article sold.

History: En. Sec. 2503, Civ. C. 1895; re-en. Sec. 5167, Rev. C. 1907; re-en. Sec. 7676, R.C.M. 1921; Cal. Civ. C. Sec. 1862; re-en. Sec. 7676, R.C.M. 1935; R.C.M. 1947, 34-104(part).

70-9-502. Disposition of surplus proceeds. In case any balance arising from such sale shall not be claimed by the rightful owner within 1 week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place, and if the same be not claimed by the owner thereof or his legal representatives within 1 year thereafter, the same shall be paid into the general fund of said county.

History: En. Sec. 2503, Civ. C. 1895; re-en. Sec. 5167, Rev. C. 1907; re-en. Sec. 7676, R.C.M. 1921; Cal. Civ. C. Sec. 1862; re-en. Sec. 7676, R.C.M. 1935; R.C.M. 1947, 34-104(part).

Part 6

Retail Launderers and Dry Cleaners

70-9-601. Disposal of property unclaimed within 180 days — notice — maintenance of records. (1) A retail launderer or dry cleaner may dispose of an article, garment, or piece of clothing left with the launderer or dry cleaner for cleaning, laundering, repairing, or other service that is not redeemed by the customer within 180 days. A retail launderer or dry cleaner is not responsible or liable for an article, garment, or piece of clothing disposed of pursuant to this section.

(2) A retail launderer or dry cleaner subject to this section shall post a notice describing the provisions of this section in a conspicuous place on the premises of the retail launderer or dry cleaner. The notice must be substantially the same as the following language: "As provided in section 70-9-601, MCA, an article, garment, or piece of clothing accepted for cleaning, laundering, repairing, or other service by a launderer or dry cleaner must be claimed within 180 days after the date the item was received for service. If an article is not claimed within 180 days, the item may be disposed of by the launderer or dry cleaner."

(3) For any item that is disposed of as provided in this section, the retail launderer or dry cleaner shall maintain copies of all service tickets or other records showing the date the item was received and the date and manner of disposition. The records must be maintained for 1 year following disposal.

(4) Any balance in excess of the charges for cleaning, laundering, repairing, or other service arising from the sale of an item unclaimed by the owner must be paid to the general fund of the county in which the sale took place.

History: En. Sec. 1, Ch. 17, L. 1995.

Part 7
Foreign Capital Depositories

70-9-701. Abandoned capital — disposition — escheatment. (1) A foreign capital depository, as defined in 32-8-103, shall presume that capital on deposit in a depository account is abandoned in accordance with the provisions of 70-9-804.

(2) A depository shall dispose of the abandoned capital in the manner provided for in this chapter, except that:

(a) a notice of the property presumed abandoned may not be published as prescribed in 70-9-810.

(b) the record of deposit required under 70-9-808 may not be made available for public inspection; and

(c) all money received by the department of revenue as a consequence of the abandonment of capital in a depository must be deposited in the general fund.

(3) A foreign capital depository may deduct from property that is presumed to be abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the depository and the owner under which the depository may impose the charge and if the depository regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

History: En. Sec. 64, Ch. 382, L. 1997.

Part 8
Uniform Unclaimed Property Act

Part Compiler's Comments

Effective Date: Section 36, Ch. 124, L. 1997, provided: "[This act] is effective July 1, 1997."

70-9-801. Short title. This part may be cited as the "Uniform Unclaimed Property Act".

History: En. Sec. 1, Ch. 124, L. 1997.

70-9-802. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this part.

(7) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

(10) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) "Owner" means a person who has a legal or equitable interest in property subject to this part or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(13) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments from the property. The term includes property that is referred to as or evidenced by:

(a) money, check, draft, deposit, interest, or dividend;

(b) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(c) stock or other evidence of ownership of an interest in a business association or financial organization;

(d) bond, debenture, note, or other evidence of indebtedness;

(e) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(f) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(g) an amount distributable from a trust or custodial fund that is established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

(16) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

History: **En. Sec. 2, Ch. 124, L. 1997.**

70-9-803. Presumptions of abandonment. (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

(c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:

(i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the apparent owner; or

(ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(d) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;

(e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(f) money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value;

(h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(i) property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

(j) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

(k) property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

(l) wages or other compensation for personal services, 1 year after the compensation becomes payable;

(m) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

(n) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(o) a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date;

(p) an unclaimed share in a cooperative that is not used for charitable or civic purposes in the community in which the cooperative is located, 5 years after the distribution date; and

(q) all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) the making of a deposit to or withdrawal from an account in a financial organization; and

(d) the payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of this part notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(6) The presumption provided in subsection (1) does not apply to:

(a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes; or

(b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic purposes in the community in which the cooperative is located.

History: En. Sec. 3, Ch. 124, L. 1997; amd. Sec. 33, Ch. 268, L. 1997.

Compiler's Comments

1997 Amendment — Coordination: Section 33, Ch. 268, L. 1997, provided that if Senate Bill No. 125 was passed and approved (Ch. 124, L. 1997), then sec. 3, Ch. 124, L. 1997, was amended by inserting (1)(p) concerning unclaimed shares in cooperatives; inserting (6)(b) concerning unclaimed shares in cooperatives; and making minor changes in style.

70-9-804. Contents of safe deposit box or other safekeeping depository. Tangible property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law are presumed abandoned if the property remains unclaimed by the owner for more than 5 years after expiration of the lease or rental period on the box or other depository.

History: En. Sec. 4, Ch. 124, L. 1997.

70-9-805. Rules for taking custody. Except as otherwise provided in this part or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

(1) the last-known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last-known address of the person entitled to the property is in this state;

(3) the records of the holder do not reflect the last-known address of the apparent owner and it is established that:

(a) the last-known address of the person entitled to the property is in this state; or

(b) the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property;

(4) the last-known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(5) the last-known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(6) the transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last-known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order purchased in this state or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

History: En. Sec. 5, Ch. 124, L. 1997.

70-9-806. Dormancy charge. A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

History: **En. Sec. 6, Ch. 124, L. 1997.**

70-9-807. Burden of proof as to property evidenced by record of check or draft. A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder that is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

History: **En. Sec. 7, Ch. 124, L. 1997.**

70-9-808. Report of abandoned property. (1) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(2) The report must be verified and must contain:

(a) a description of the property;

(b) except with respect to a traveler's check or money order, the name, if known, and last-known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of $50 or more;

(c) an aggregated amount of items valued under $50 each;

(d) in the case of an amount of $50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last-known address of the annuitant or insured and of the beneficiary;

(e) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator and any amounts owing to the holder;

(f) the date, if any, on which the property became payable, demandable, or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(g) other information that the administrator by rule prescribes as necessary for the administration of this part.

(3) If a holder of property presumed abandoned is a successor to another person that previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(4) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(5) The holder of property that is presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this part if:

(a) the holder has in its records an address for the apparent owner that the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by a statute of limitations; and

(c) the value of the property is $50 or more.

(6) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(7) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (5).

History: En. Sec. 8, Ch. 124, L. 1997.

70-9-809. Payment or delivery of abandoned property. (1) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by 70-9-808, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed; however, if the property is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until 60 days after filing the report required by 70-9-808.

(2) If the property reported to the administrator is a security or security entitlement under Title 30, chapter 8, the administrator is an appropriate person to make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Title 30, chapter 8.

(3) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to 30-8-415, but an indemnity bond is not required.

(4) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with 70-9-811.

History: En. Sec. 9, Ch. 124, L. 1997.

70-9-810. Notice and publication of lists of abandoned property. (1) The administrator shall publish a notice not later than November 30 of the year following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the county of this state in which is located the last-known address of any person named in the notice. If a holder does not report an address for the apparent owner or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:

(a) the name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(b) the last-known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(c) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(d) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(2) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than $50 or information concerning a traveler's check, money order, or similar instrument.

History: En. Sec. 10, Ch. 124, L. 1997.

70-9-811. Custody by state — recovery by holder — defense of holder. (1) In this section, payment or delivery is made in "good faith" if:

(a) payment or delivery was made in a reasonable attempt to comply with this part;

(b) the holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(c) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(2) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder that pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(3) A holder that has paid money to the administrator pursuant to this part may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person that reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under 70-9-819.

(4) A holder that has delivered property other than money to the administrator pursuant to this part may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(5) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(6) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(7) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

History: **En. Sec. 11, Ch. 124, L. 1997.**

70-9-812. Public sale of abandoned property. (1) Except as otherwise provided in this section, the administrator, within 3 years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state, which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least 3 weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of 3 years after their delivery to the administrator, a person making a claim under this part before the end of the 3-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under this part after the expiration of the 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator.

(3) A purchaser of property at a sale conducted by the administrator pursuant to this part takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

History: **En. Sec. 12, Ch. 124, L. 1997.**

70-9-813. Deposit of funds. (1) Except as otherwise provided by this section, the administrator shall promptly deposit in the general fund of this state all funds received under this part, including the proceeds from the sale of abandoned property under 70-9-812. The administrator shall retain in a separate trust fund at least $100,000 from which the administrator shall pay claims allowed. The administrator shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the property and the name and last-known address of each insured person or annuitant and beneficiary and, with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

(2) Before making a deposit to the credit of the general fund, the administrator may deduct:

(a) expenses of sale of abandoned property;

(b) costs of mailing and publication in connection with abandoned property;

(c) reasonable service charges; and

(d) expenses incurred in examining records of holders of property and in collecting the property from those holders.

History: En. Sec. 13, Ch. 124, L. 1997.

70-9-814. Claim of another state to recover property. (1) After property has been paid or delivered to the administrator under this part, another state may recover the property if:

(a) the property was paid or delivered to the custody of this state because the records of the holder did not reflect a last-known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state, and under the laws of that state, the property has escheated or become subject to a claim of abandonment by that state;

(b) the property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(c) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last-known location of the owner within the borders of another state, and under the laws of that state, the property has escheated or become subject to a claim of abandonment by that state;

(d) the property was subjected to custody by this state under 70-9-805(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(e) the property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this state under 70-9-805(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(2) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (1).

(3) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

History: En. Sec. 14, Ch. 124, L. 1997.

70-9-815. Filing claim with administrator — handling of claims by administrator. (1) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(2) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under 70-9-816.

(3) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest, or other increment to which the claimant is entitled under 70-9-812.

(4) A holder that pays the owner for property that has been delivered to the state and that, if claimed from the administrator by the owner, would be subject to an increment under 70-9-812 may recover from the administrator the amount of the increment.

History: En. Sec. 15, Ch. 124, L. 1997.

70-9-816. Action to establish claim. A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the district court, naming the administrator as a defendant. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney fees.

History: En. Sec. 16, Ch. 124, L. 1997.

70-9-817. Election to take payment or delivery. (1) The administrator may decline to receive property reported under this part that the administrator considers to have a value less than the expenses of notice and sale.

(2) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property that is delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under this part.

History: En. Sec. 17, Ch. 124, L. 1997.

70-9-818. Destruction or disposition of property having no substantial commercial value — immunity from liability. If the administrator determines after investigation that property delivered under this part has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section except for intentional misconduct or malfeasance.

History: En. Sec. 18, Ch. 124, L. 1997.

70-9-819. Periods of limitation. (1) The expiration, before or after July 1, 1997, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this part.

(2) An action or proceeding may not be maintained by the administrator to enforce this part in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

History: En. Sec. 19, Ch. 124, L. 1997.

70-9-820. Requests for reports and examination of records. (1) The administrator may require a person that has not filed a report or a person that the administrator believes has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this part, describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(2) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this part. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this part. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(3) The administrator, at reasonable times, may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial organization that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (2) to both the association or organization and the agent at least 90 days before the examination.

(4) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(a) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this part;

(b) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(c) produced pursuant to subpoena or court order; or

(d) disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection (4) if the other state is bound to keep the documents and papers confidential.

(5) If an examination of the records of a person results in the disclosure of property reportable under this part, the administrator may assess the cost of the examination against the holder at the rate of $200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (3) may be assessed only against the business association or financial organization.

(6) If, after July 1, 1997, a holder does not maintain the records required by 70-9-821 and the records of the holder available for the periods subject to this part are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

History: En. Sec. 20, Ch. 124, L. 1997.

70-9-821. Retention of records. (1) Except as otherwise provided in subsection (2), a holder required to file a report under 70-9-808 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report unless a shorter period is provided by rule of the administrator.

(2) A business association or financial organization that sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for 3 years after the holder files the report.

History: En. Sec. 21, Ch. 124, L. 1997.

70-9-822. Enforcement. The administrator may maintain an action in this or another state to enforce this part. The court may award reasonable attorney fees to the prevailing party.

History: En. Sec. 22, Ch. 124, L. 1997.

70-9-823. Interstate agreements and cooperation — joint and reciprocal actions with other states. (1) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in 70-9-820. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(2) The administrator may join with another state to seek enforcement of this part against any person that is or may be holding property reportable under this part.

(3) At the request of another state, the attorney general of this state may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(4) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. With the approval of the attorney general of this state, the administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney fees may be paid from money received under this part. The administrator may agree to pay expenses and attorney fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this part.

History: **En. Sec. 23, Ch. 124, L. 1997.**

70-9-824. Interest and penalties. (1) A holder that fails to report, pay, or deliver property within the time prescribed by this part shall pay to the administrator interest at the annual rate of 12% on the property or value of the property from the date the property should have been reported, paid, or delivered.

(2) Except as otherwise provided in subsection (3), a holder that fails to report, pay, or deliver property within the time prescribed by this part, or fails to perform other duties imposed by this part, shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $100 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of $2,500.

(3) A holder that willfully fails to report, pay, or deliver property within the time prescribed by this part, or willfully fails to perform other duties imposed by this part, shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $1,000 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of $25,000, plus 25% of the value of any property that should have been but was not reported.

(4) A holder that makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $1,000 for each day from the date a report under this part was due, up to a maximum of $25,000, plus 25% of the value of any property that should have been but was not reported.

(5) The administrator for good cause may waive, in whole or in part, interest under subsection (1) and penalties under subsections (2) and (3) and shall waive penalties if the holder acted in good faith and without negligence.

History: **En. Sec. 24, Ch. 124, L. 1997.**

70-9-825. Agreement to locate property. (1) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

(2) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner, and states the value of the property before and after the fee or other compensation has been deducted.

(3) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(4) An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney fees to an owner who prevails in the action.

(5) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.

History: **En. Sec. 25, Ch. 124, L. 1997.**

70-9-826. Foreign transactions. This part does not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

History: **En. Sec. 26, Ch. 124, L. 1997.**

70-9-827. Transitional provisions. (1) An initial report filed under this part for property that was not required to be reported before July 1, 1997, but that is subject to this part must include all items of property that would have been presumed abandoned during the 10-year period next preceding July 1, 1997, as if this part had been in effect during that period.

(2) This part does not relieve a holder of a duty that arose before July 1, 1997, to report, pay, or deliver property. Except as otherwise provided in 70-9-819(2), a holder that did not comply with the law in effect before July 1, 1997, is subject to the applicable provisions for enforcement and penalties that then existed, which are continued in effect for the purpose of this section.

History: **En. Sec. 27, Ch. 124, L. 1997.**

70-9-828. Rules. The administrator may adopt, pursuant to Title 2, chapter 4, rules necessary to carry out this part.

History: **En. Sec. 28, Ch. 124, L. 1997.**

70-9-829. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: **En. Sec. 29, Ch. 124, L. 1997.**

CHAPTERS 10 THROUGH 14

RESERVED

CHAPTER 15

DEFINITIONS AND KINDS OF ESTATES IN REAL PROPERTY

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Part 1

Real Property Defined Fixtures and Appurtenances

70-15-101. Real property defined. Real or immovable property consists of:

(1) land;
(2) that which is affixed to land;
(3) that which is incidental or appurtenant to land;
(4) that which is immovable by law.

History: En. Sec. 1074, Civ. C. 1895; re-en. Sec. 4425, Rev. C. 1907; re-en. Sec. 6667, R.C.M. 1921; Cal. Civ. C. Sec. 658; Based on Field Civ. C. Sec. 163; re-en. Sec. 6667, R.C.M. 1935; R.C.M. 1947, 67-207.

Cross-References

Real estate defined, 37-51-102.

70-15-102. Land defined. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

History: En. Sec. 1075, Civ. C. 1895; re-en. Sec. 4426, Rev. C. 1907; re-en. Sec. 6668, R.C.M. 1921; Cal. Civ. C. Sec. 659; Field Civ. C. Sec. 164; re-en. Sec. 6668, R.C.M. 1935; R.C.M. 1947, 67-208.

70-15-103. Fixture defined. A thing is deemed to be affixed to land when it is:
(1) attached to it by roots, as in the case of trees, vines, or shrubs;
(2) imbedded in it, as in the case of walls;
(3) permanently resting upon it, as in the case of buildings; or
(4) permanently attached to what is thus permanent as by means of cement, plaster, nails, bolts, or screws.

History: En. Sec. 1076, Civ. C. 1895; re-en. Sec. 4427, Rev. C. 1907; re-en. Sec. 6669, R.C.M. 1921; Cal. Civ. C. Sec. 660; Field Civ. C. Sec. 165; re-en. Sec. 6669, R.C.M. 1935; R.C.M. 1947, 67-209.

70-15-104. Fixtures attached to mines. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine are to be deemed affixed to the mine.

History: En. Sec. 1077, Civ. C. 1895; re-en. Sec. 4428, Rev. C. 1907; re-en. Sec. 6670, R.C.M. 1921; Cal. Civ. C. Sec. 661; re-en. Sec. 6670, R.C.M. 1935; R.C.M. 1947, 67-210.

70-15-105. Incident or appurtenance defined. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way or watercourse or of a passage for light, air, or heat from or across the land of another.

History: En. Sec. 1078, Civ. C. 1895; re-en. Sec. 4429, Rev. C. 1907; re-en. Sec. 6671, R.C.M. 1921; Cal. Civ. C. Sec. 662; Field Civ. C. Sec. 166; re-en. Sec. 6671, R.C.M. 1935; R.C.M. 1947, 67-211.

Part 2

Classification of Interests in Real Property

Part Cross-References

Trust Code, Title 72, ch. 33 through 36.

70-15-201. Application of classifications. The names and classification of interests in real property have only such application to interests in personal property as is in this code expressly provided.

History: En. Sec. 1123, Civ. C. 1895; re-en. Sec. 4456, Rev. C. 1907; re-en. Sec. 6698, R.C.M. 1921; Cal. Civ. C. Sec. 702; Field Civ. C. Sec. 194; re-en. Sec. 6698, R.C.M. 1935; R.C.M. 1947, 67-328.

70-15-202. Enumeration of estates. Estates in real property, in respect to the duration of their enjoyment, are either:

(1) estates of inheritance or perpetual estates;

(2) estates for life;

(3) estates for years;

(4) estates from year to year, quarter to quarter, month to month, week to week, day to day, and for other indefinite and unascertained durations of enjoyment whatsoever, except estates or tenancies at will; or

(5) estates at will.

History: En. Sec. 1210, Civ. C. 1895; re-en. Sec. 4481, Rev. C. 1907; re-en. Sec. 6723, R.C.M. 1921; Cal. Civ. C. Sec. 761; Field Civ. C. Sec. 218; amd. Sec. 1, Ch. 48, L. 1931; re-en. Sec. 6723, R.C.M. 1935; R.C.M. 1947, 67-502.

Cross-References

Quieting title to real property, Title 70, ch. 28.

70-15-203. Fee simple. Every estate of inheritance is a fee, and such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

History: En. Sec. 1211, Civ. C. 1895; re-en. Sec. 4482, Rev. C. 1907; re-en. Sec. 6724, R.C.M. 1921; Cal. Civ. C. Sec. 762; Based on Field Civ. Sec. 219; re-en. Sec. 6724, R.C.M. 1935; R.C.M. 1947, 67-503.

70-15-204. Estates tail abolished — considered fee simple. Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple and, if no valid remainder is limited thereon, is a fee simple absolute.

History: En. Sec. 1212, Civ. C. 1895; re-en. Sec. 4483, Rev. C. 1907; re-en. Sec. 6725, R.C.M. 1921; Cal. Civ. C. Sec. 763; Based on Field Civ. C. Sec. 220; re-en. Sec. 6725, R.C.M. 1935; R.C.M. 1947, 67-504.

70-15-205. Remainder limited upon fee tail valid — vesting. Where a remainder in fee is limited upon any estate which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee and vests in possession on the death of the first taker without issue living at the time of his death.

History: En. Sec. 1213, Civ. C. 1895; re-en. Sec. 4484, Rev. C. 1907; re-en. Sec. 6726, R.C.M. 1921; Cal. Civ. C. Sec. 764; Based on Field Civ. C. Sec. 221; re-en. Sec. 6726, R.C.M. 1935; R.C.M. 1947, 67-505.

70-15-206. Freehold estates — chattels real — chattel interests. Estates of inheritance and for life are called estates of freehold; estates for years and estates embraced by the provisions of 70-15-202(4) are chattels real; and estates at will are chattel interests but are not liable as such to sale on execution.

History: En. Sec. 1214, Civ. C. 1895; re-en. Sec. 4485, Rev. C. 1907; re-en. Sec. 6727, R.C.M. 1921; Cal. Civ. C. Sec. 765; Field Civ. C. Sec. 222; amd. Sec. 1, Ch. 49, L. 1931; re-en. Sec. 6727, R.C.M. 1935; R.C.M. 1947, 67-506.

70-15-207. Estate for life of third person — freehold. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

History: En. Sec. 1215, Civ. C. 1895; re-en. Sec. 4486, Rev. C. 1907; re-en. Sec. 6728, R.C.M. 1921; Cal. Civ. C. Sec. 766; re-en. Sec. 6728, R.C.M. 1935; R.C.M. 1947, 67-507.

70-15-208. Term of years — suspension of absolute ownership. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

History: En. Sec. 1219, Civ. C. 1895; re-en. Sec. 4490, Rev. C. 1907; re-en. Sec. 6732, R.C.M. 1921; Cal. Civ. C. Sec. 770; re-en. Sec. 6732, R.C.M. 1935; R.C.M. 1947, 67-511.

Cross-References

Conditions and limitations of ownership, Title 70, ch. 1, part 4.

70-15-209. Future estate — right of possession at future day. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate or on the termination by lapse of time or otherwise of a precedent estate created at the same time.

History: En. Sec. 1216, Civ. C. 1895; re-en. Sec. 4487, Rev. C. 1907; re-en. Sec. 6729, R.C.M. 1921; Cal. Civ. C. Sec. 767; Field Civ. C. Sec. 224; re-en. Sec. 6729, R.C.M. 1935; R.C.M. 1947, 67-508.

Cross-References

Future interest — to what entitles owner, 70-1-317.

70-15-210. Reversion. A reversion is the residue of an estate left by operation of law in the grantor or his successors or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

History: En. Sec. 1217, Civ. C. 1895; re-en. Sec. 4488, Rev. C. 1907; re-en. Sec. 6730, R.C.M. 1921; Cal. Civ. C. Sec. 768; Field Civ. C. Sec. 225; re-en. Sec. 6730, R.C.M. 1935; R.C.M. 1947, 67-509.

70-15-211. Remainder. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder and may be created and transferred by that name.

History: En. Sec. 1218, Civ. C. 1895; re-en. Sec. 4489, Rev. C. 1907; re-en. Sec. 6731, R.C.M. 1921; Cal. Civ. C. Sec. 769; Field Civ. C. Sec. 226; re-en. Sec. 6731, R.C.M. 1935; R.C.M. 1947, 67-510.

70-15-212. Future and contingent estates — how created. Subject to the rules of parts 1, 3, and 4 of chapter 1, parts 1 and 2 of this chapter, and part 1 of chapter 17:

(1) a freehold estate, as well as a chattel real, may be created to commence at a future day;

(2) an estate for life may be created in a term of years and a remainder limited thereon;

(3) a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and

(4) a fee may be limited on a fee upon a contingency which, if it should occur, must happen within the period prescribed in this code.

History: En. Sec. 1222, Civ. C. 1895; re-en. Sec. 4493, Rev. C. 1907; re-en. Sec. 6735, R.C.M. 1921; Cal. Civ. C. Sec. 773; Field Civ. C. Sec. 230; re-en. Sec. 6735, R.C.M. 1935; R.C.M. 1947, 67-514.

70-15-213. Remainder upon a contingency. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate, and every such remainder is to be deemed a conditional limitation.

History: En. Sec. 1227, Civ. C. 1895; re-en. Sec. 4498, Rev. C. 1907; re-en. Sec. 6740, R.C.M. 1921; Cal. Civ. C. Sec. 778; Field Civ. C. Sec. 236; re-en. Sec. 6740, R.C.M. 1935; R.C.M. 1947, 67-519.

70-15-214. Remainder not upon a contingency — when to take effect. When a remainder of an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker or the expiration by lapse of time of such term of years.

History: En. Sec. 1229, Civ. C. 1895; re-en. Sec. 4500, Rev. C. 1907; re-en. Sec. 6742, R.C.M. 1921; Cal. Civ. C. Sec. 780; Field Civ. C. Sec. 238; re-en. Sec. 6742, R.C.M. 1935; R.C.M. 1947, 67-521.

70-15-215. Remainder to heirs of tenant for life — effect of. When a remainder is limited to the heirs or heirs of the body of a person to whom a life estate in the same property is given, the persons who on the termination of the life estate are the successors or heirs of the body of the owner for life are entitled to take by virtue of the remainder so limited to them and not as mere successors of the owner for life.

History: En. Sec. 1228, Civ. C. 1895; re-en. Sec. 4499, Rev. C. 1907; re-en. Sec. 6741, R.C.M. 1921; Cal. Civ. C. Sec. 779; Field Civ. C. Sec. 237; re-en. Sec. 6741, R.C.M. 1935; R.C.M. 1947, 67-520.

70-15-216. When vesting of future estate not prevented by power of appointment. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

History: En. Sec. 1230, Civ. C. 1895; re-en. Sec. 4501, Rev. C. 1907; re-en. Sec. 6743, R.C.M. 1921; Cal. Civ. C. Sec. 781; Field Civ. C. Sec. 239; re-en. Sec. 6743, R.C.M. 1935; R.C.M. 1947, 67-522.

Part 3
Powers

70-15-301. Power defined. A "power", as the term is used in this part, is an authority to do some act in relation to real property or to the creation or revocation of an estate therein or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose.

History: En. Sec. 1330, Civ. C. 1895; re-en. Sec. 4551, Rev. C. 1907; re-en. Sec. 6798, R.C.M. 1921; Field Civ. C. Sec. 302; re-en. Sec. 6798, R.C.M. 1935; R.C.M. 1947, 67-901.

70-15-302. Who may not execute power. A power cannot be executed by any person not capable of disposing of real property.

History: En. Sec. 1331, Civ. C. 1895; re-en. Sec. 4552, Rev. C. 1907; re-en. Sec. 6799, R.C.M. 1921; Field Civ. C. Sec. 319; re-en. Sec. 6799, R.C.M. 1935; R.C.M. 1947, 67-902.

70-15-303. Married persons — execution. (1) A married person may execute a power during marriage without the concurrence of the spouse unless otherwise prescribed by the terms of the power.

(2) No power can be executed by a married woman before she attains her majority which could not be executed by a married man before he attains his majority.

History: (1)En. Sec. 1332, Civ. C. 1895; re-en. Sec. 4553, Rev. C. 1907; re-en. Sec. 6800, R.C.M. 1921; Field Civ. C. Sec. 320; re-en. Sec. 6800, R.C.M. 1935; amd. Sec. 31, Ch. 535, L. 1975; Sec. 67-903, R.C.M. 1947; (2)En. Sec. 1333, Civ. C. 1895; re-en. Sec. 4554, Rev. C. 1907; re-en. Sec. 6801, R.C.M. 1921; Based on Field Civ. C. Sec. 321; re-en. Sec.

6801, R.C.M. 1935; amd. Sec. 32, Ch. 535, L. 1975; Sec. 67-904, R.C.M. 1947; R.C.M. 1947, 67-903, 67-904.

70-15-304. Power — how executed. A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner.

History: En. Sec. 1334, Civ. C. 1895; re-en. Sec. 4555, Rev. C. 1907; re-en. Sec. 6802, R.C.M. 1921; Field Civ. C. Sec. 322; re-en. Sec. 6802, R.C.M. 1935; R.C.M. 1947, 67-905.

Cross-References

What contracts must be in writing, 28-2-903.

CHAPTER 16

RIGHTS AND OBLIGATIONS INCIDENTAL TO OWNERSHIP IN REAL PROPERTY

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70-16-102. Rights of life tenant.
70-16-103. Duties of life tenant.
70-16-104. Rights of tenant for years or at will.
70-16-105. Remedy of remainderman or reversioner.
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70-16-110 reserved.
70-16-111. Entry to property by professional land surveyor or other qualified person — trespass exception — notice — liability.

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70-16-201. Owner of land bounded by water.
70-16-202. Owner of land bounded by road.
70-16-203. Adjoining owner's right to lateral and subjacent support — excavations.
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70-16-401. Reentry — when and how to be made.
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Chapter Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Part 1
General Provisions

70-16-101. Rights of owner in fee — above and below surface. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

History: En. Sec. 1290, Civ. C. 1895; re-en. Sec. 4528, Rev. C. 1907; re-en. Sec. 6770, R.C.M. 1921; Cal. Civ. C. Sec. 829; Field Civ. C. Sec. 266; re-en. Sec. 6770, R.C.M. 1935; R.C.M. 1947, 67-711.

70-16-102. Rights of life tenant. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

History: En. Sec. 1270, Civ. C. 1895; re-en. Sec. 4518, Rev. C. 1907; re-en. Sec. 6760, R.C.M. 1921; Cal. C. Sec. 818; Field Civ. C. Sec. 257; re-en. Sec. 6760, R.C.M. 1935; R.C.M. 1947, 67-701.

70-16-103. Duties of life tenant. The owner of a life estate must keep the buildings and fences in repair from ordinary waste and must pay the taxes and other annual charges and a just proportion of extraordinary assessments benefiting the whole inheritance.

History: En. Sec. 1300, Civ. C. 1895; re-en. Sec. 4534, Rev. C. 1907; re-en. Sec. 6776, R.C.M. 1921; Cal. Civ. C. Sec. 840; Field Civ. C. Sec. 272; re-en. Sec. 6776, R.C.M. 1935; R.C.M. 1947, 67-801.

70-16-104. Rights of tenant for years or at will. (1) A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of his tenancy; and a tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of his tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to him by the agreement or instrument by which his tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by chapter 24 of this title.

History: (1)En. Sec. 1271, Civ. C. 1895; re-en. Sec. 4519, Rev. C. 1907; re-en. Sec. 6761, R.C.M. 1921; Cal. Civ. C. Sec. 819; Based on Field Civ. C. Sec. 258; re-en. Sec. 6761, R.C.M. 1935; Sec. 67-702, R.C.M. 1947; (2)En. Sec. 1272, Civ. C. 1895; re-en. Sec. 4520, Rev. C. 1907; re-en. Sec. 6762, R.C.M. 1921; Cal. Civ. C. Sec. 820; Field Civ. C. Sec. 259; re-en. Sec. 6762, R.C.M. 1935; Sec. 67-703, R.C.M. 1947; R.C.M. 1947, 67-702, 67-703; (3)En. Sec. 5, Ch. 115, L. 1979.

Cross-References

The Montana Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.

Landlord and tenant — supplementary provisions, Title 70, ch. 26.

Forcible entry and detainer — unlawful detainer, Title 70, ch. 27.

70-16-105. Remedy of remainderman or reversioner. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years and although, after its commission, his estate is transferred and he has no interest in the property at the commencement of the action.

History: En. Sec. 1278, Civ. C. 1895; re-en. Sec. 4526, Rev. C. 1907; re-en. Sec. 6768, R.C.M. 1921; Cal. Civ. C. Sec. 826; Field Civ. C. Sec. 265; re-en. Sec. 6768, R.C.M. 1935; R.C.M. 1947, 67-709.

70-16-106. Action for waste — treble damages. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commits waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

History: En. Sec. 229, p. 91, Bannack Stat.; re-en. Sec. 250, p. 187, L. 1867; re-en. Sec. 299, p. 93, Cod. Stat. 1871; re-en. Sec. 350, p. 137, L. 1877; re-en. Sec. 350, 1st Div. Rev. Stat. 1879; re-en. Sec. 362, 1st Div. Comp. Stat. 1887; re-en. Sec. 1301, C. Civ. Proc. 1895; re-en. Sec. 6866, Rev. C. 1907; re-en. Sec. 9475, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 732; re-en. Sec. 9475, R.C.M. 1935; R.C.M. 1947, 93-6102.

Cross-References

Statutes of limitation, Title 27, ch. 2, part 2.

Action by or against joint tenants or tenants in common, 70-1-310.

Abuse of property held jointly or in common — mining property, 70-19-202.

70-16-107. Trespass for taking timber. (1) Any person who cuts down or carries off any wood or underwood, tree, or timber or girdles or otherwise injures any tree or timber on the land of another person or on the street or highway in front of any person's house, village or city lot, or cultivated grounds or on the commons or public grounds of any city or town or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land or to such city or town for treble the amount of damages which may be assessed therefor in a civil action in any court having jurisdiction.

(2) Nothing in subsection (1) authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land or adjoining it.

History: (1)En. Sec. 230, p. 91, Bannack Stat.; re-en. Sec. 251, p. 187, L. 1867; re-en. Sec. 300, p. 93, Cod. Stat. 1871; re-en. Sec. 351, p. 137, L. 1877; re-en. Sec. 351, 1st Div. Rev. Stat. 1879; re-en. Sec. 363, 1st Div. Comp. Stat. 1887; re-en. Sec. 1302, C. Civ. Proc. 1895; re-en. Sec. 6867, Rev. C. 1907; re-en. Sec. 9476, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 733; re-en. Sec. 9476, R.C.M. 1935; Sec. 93-6103, R.C.M. 1947; (2)En. Sec. 231, p. 91, Bannack Stat.; re-en. Sec. 252, p. 187, L. 1867; re-en. Sec. 301, p. 93, Cod. Stat. 1871; re-en. Sec. 352, p. 137, L. 1877; re-en. Sec. 352, 1st Div. Rev. Stat. 1879; re-en. Sec. 364, 1st Div. Comp. Stat. 1887; re-en. Sec. 1303, C. Civ. Proc. 1895; re-en. Sec. 6868, Rev. C. 1907; re-en. Sec. 9477, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 734; re-en. Sec. 9477, R.C.M. 1935; Sec. 93-6104, R.C.M. 1947; R.C.M. 1947, 93-6103, 93-6104.

70-16-108. Injury to timber — exceptions as to treble damages. For wrongful injuries to timber, trees, or underwood upon the land of another or removal thereof, the measure of damage is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser or where the wood was taken by the authority of highway officers for the purposes of a highway, in which cases the damages are a sum equal to the actual detriment.

History: En. Sec. 4352, Civ. C. 1895; re-en. Sec. 6078, Rev. C. 1907; re-en. Sec. 8696, R.C.M. 1921; Cal. Civ. C. Sec. 3346; Field. Civ. C. Sec. 1871; re-en. Sec. 8696, R.C.M. 1935; R.C.M. 1947, 17-503.

70-16-109. Summary proceedings for possession — where provisions found. Summary proceedings for obtaining possession of real property forcibly entered or forcibly and unlawfully detained are provided for in chapter 27.

History: En. Sec. 1243, Civ. C. 1895; re-en. Sec. 4505, Rev. C. 1907; re-en. Sec. 6747, R.C.M. 1921; Cal. Civ. C. Sec. 792; re-en. Sec. 6747, R.C.M. 1935; R.C.M. 1947, 67-526.

Cross-References

Wrongful occupation of real property, 27-1-318.

70-16-110 reserved.

70-16-111. Entry to property by professional land surveyor or other qualified person — trespass exception — notice — liability. (1) Subject to the conditions and restrictions of this section, the provisions of 45-6-203 do not apply to a person who is licensed or registered under Title 37, chapter 67, part 3, as a professional land surveyor, as defined in 37-67-101, or to a person acting under the direct supervision of a professional land surveyor as an employee, agent, or representative.

(2) A person qualified under subsection (1) may enter public or private land to investigate and use boundary evidence and perform boundary surveys if the notice requirements of subsection (3) are met.

(3) (a) At least 15 days before the desired date of entry to land, a professional land surveyor shall give notice to the owner of the land, by certified mail, return receipt requested. The notice must contain the following information:

(i) the identity of the person for whom the survey is being performed;

(ii) the purpose for which the survey is being performed;

(iii) the name of the employer of the professional land surveyor;

(iv) the identity of the professional land surveyor;

(v) the dates, times, and location of entry to the land, including the estimated number of entries;

(vi) a timetable for completion of the survey, including an estimated completion date; and

(vii) a statement requesting the landowner to provide the surveyor with the name of each person who occupies the land as a tenant or lessee.

(b) A landowner may waive the notice requirement of this subsection (3), either orally or in writing.

(c) This section does not impose liability upon a landowner who fails or refuses to provide the requested entry.

(4) (a) If a landowner does not acknowledge receipt of the notice within 15 days, a person qualified under subsection (1) may enter the land pursuant to the specifications given in the notice.

(b) If a landowner acknowledges receipt of the notice within 15 days, the landowner may modify the access provisions of the notice, as long as the modifications do not unreasonably restrict completion of the survey.

(5) Persons qualified under subsection (1) who enter land pursuant to this section shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification upon request.

(6) Vehicular access to perform surveys is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(7) Approval of the landowner is required for the clearing of trees, brush, or other vegetation.

(8) A landowner may request a person qualified under subsection (1) who enters land pursuant to this section to wash any vehicle prior to entry in order

to remove mud and debris that might carry noxious weeds or noxious weed seeds. The person may request that the landowner be present at the time of any entry to inspect the vehicle under the terms of this subsection.

(9) Entry upon land for survey purposes by a person qualified under subsection (1) creates a rebuttable presumption that the landowner or lessee properly protected the person against personal injury or property damage while the person was on the land.

(10) As an act of good will and in order to keep the landowner informed, a professional land surveyor shall supply the landowner with information on located, established, or reestablished corners that lie on the land or that may affect the boundaries of the land. Upon request, the professional land surveyor shall provide the landowner with a copy of any relevant survey filed or recorded.

History: En. Sec. 2, Ch. 604, L. 1993.

Cross-References

Criminal trespass to property, 45-6-203.

Part 2

Adjoining Landowners and Boundaries — Fences

Part Cross-References

Fences, Title 81, ch. 4, part 1.

70-16-201. Owner of land bounded by water. Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

History: En. Sec. 1291, Civ. C. 1895; re-en. Sec. 4529, Rev. C. 1907; re-en. Sec. 6771, R.C.M. 1921; Cal. Civ. C. Sec. 830; Based on Field Civ. C. Sec. 267; re-en. Sec. 6771, R.C.M. 1935; R.C.M. 1947, 67-712.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Recreational use of streams, Title 23, ch. 2, part 3.

Public ways, 85-1-111.

Navigable waters, 85-1-112.

70-16-202. Owner of land bounded by road. An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.

History: En. Sec. 1292, Civ. C. 1895; re-en. Sec. 4530, Rev. C. 1907; re-en. Sec. 6772, R.C.M. 1921; Cal. Civ. C. Sec. 831; Field Civ. C. Sec. 268; re-en. Sec. 6772, R.C.M. 1935; R.C.M. 1947, 67-713.

70-16-203. Adjoining owner's right to lateral and subjacent support — excavations. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for the purposes of construction, on using ordinary care and skill and taking reasonable precautions to sustain the land of the other and giving previous reasonable notice to the other of his intention to make such excavations.

History: En. Sec. 1293, Civ. C. 1895; re-en. Sec. 4531, Rev. C. 1907; re-en. Sec. 6773, R.C.M. 1921; Cal. Civ. C. Sec. 832; Based on Field Civ. C. Sec. 269; re-en. Sec. 6773, R.C.M. 1935; R.C.M. 1947, 67-714.

70-16-204. Trees on or near boundary. (1) Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

(2) Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

History: **En. Secs. 1294, 1295, Civ. C. 1895; re-en. Secs. 4532, 4533, Rev. C. 1907; re-en. Secs. 6774, 6775, R.C.M. 1921; Cal. Civ. C. Secs. 833, 834; Field Civ. C. Secs. 270, 271; re-en. Secs. 6774, 6775, R.C.M. 1935; R.C.M. 1947, 67-715, 67-716.**

70-16-205. Monuments and fences — mutual obligation of adjoining owners. (1) Coterminous owners are mutually bound equally to maintain:

(a) the boundaries and monuments between them;

(b) the fences between them, unless one of them chooses to let his land lie without fencing, in which case if he afterwards encloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter. However, using land for grazing or pasturage of any kind whatsoever must be considered a usage of the land, and the land must not be considered as lying idle under the provisions of this section.

(2) Except as provided by prescription, custom, or agreement between coterminous owners, each coterminous owner shall maintain all fencing to the right of the midpoint of the common boundary line as viewed from his land. If the land of one owner is entirely surrounded by the land of another, each owner shall maintain all fencing to the right, as viewed from his land, of the northeastern corner of the surrounded land or, if there is more than one northeastern corner, then from the northernmost northeastern corner to a point midway around the surrounded land. If there is a substantial difference in terrain or topographical features of the land between the coterminous owners, responsibility for maintaining the fence must be determined by mutual agreement with consideration given to factors such as cost and time.

History: **En. Sec. 1301, Civ. C. 1895; re-en. Sec. 4535, Rev. C. 1907; amd. Sec. 1, Ch. 132, L. 1917; re-en. Sec. 6777, R.C.M. 1921; Cal. Civ. C. Sec. 841; Based on Field Civ. C. Sec. 273; re-en. Sec. 6777, R.C.M. 1935; R.C.M. 1947, 67-802; amd. Sec. 1, Ch. 402, L. 1989.**

70-16-206. Partition fences required — adjoining lands previously enclosed. The occupants of adjoining lands enclosed with fences must build and maintain partition fences between their own and the next adjoining enclosure in equal shares so long as both continue to enclose the same, and such partition fence must be kept in good repair throughout the year unless the occupants otherwise mutually agree.

History: **En. Sec. 1114, 5th Div. Comp. Stat. 1887; amd. Sec. 3253, Pol. C. 1895; re-en. Sec. 2085, Rev. C. 1907; re-en. Sec. 6778, R.C.M. 1921; re-en. Sec. 6778, R.C.M. 1935; R.C.M. 1947, 67-803.**

70-16-207. Occupant of land adjoining enclosure of another — when required to share expense of partition fence. If any occupant of land adjoining the enclosure of another enclose the same, upon the enclosure of such other person, he must within 3 months thereafter build his proportion of such partition fence or refund to the owner thereof an equal proportion of the value, at that time, of any partition fence of such adjoining occupant.

History: **En. Sec. 1115, 5th Div. Comp. Stat. 1887; re-en. Sec. 3254, Pol. C. 1895; re-en. Sec. 2086, Rev. C. 1907; re-en. Sec. 6779, R.C.M. 1921; re-en. Sec. 6779, R.C.M. 1935; R.C.M. 1947, 67-804.**

70-16-208. Partition fence when common occupancy ceases. Whenever any lands belonging to different persons in severalty have been enclosed and occupied in common or without a partition fence between them and one of such occupants desires to occupy his part in severalty, the other occupant must, within 6 months after being notified in writing, build and maintain his proportion of such partition fence as may be necessary for that purpose, and in case of neglect or refusal so to do, the person giving such notice may build such fence at the expense of the person so neglecting or refusing, the amount expended to be recovered in an action, together with all damages he may sustain on account of such neglect or refusal.

History: En. Sec. 1116, 5th Div. Comp. Stat. 1887; re-en. Sec. 3255, Pol. C. 1895; re-en. Sec. 2087, Rev. C. 1907; re-en. Sec. 6780, R.C.M. 1921; re-en. Sec. 6780, R.C.M. 1935; R.C.M. 1947, 67-805.

70-16-209. Repair or rebuilding of partition fences. In case any person neglects or refuses to repair or rebuild any partition fence which by law he ought to build or maintain, the occupant of the adjoining land may, after giving 60 days' notice that a new fence should be erected or 5 days' notice in writing that the repairing of such fence is necessary, build or repair such fence at the expense of the party so neglecting or refusing, the amount so expended to be recovered from him; and the party so neglecting or refusing, after receipt by him of the notice above provided, is liable to the party injured for all damages he may sustain thereby.

History: En. Sec. 1118, 5th Div. Comp. Stat. 1887; re-en. Sec. 3257, Pol. C. 1895; re-en. Sec. 2089, Rev. C. 1907; re-en. Sec. 6782, R.C.M. 1921; re-en. Sec. 6782, R.C.M. 1935; R.C.M. 1947, 67-807.

70-16-210. Removal of partition fence. If the occupants of adjoining lands build their respective portions of a partition fence and either of them at any time desires to suffer the land occupied by him to lie open, he may, after having given to the occupants of the adjoining land at least 6 months' notice of his intention so to do, remove his proportion of the partition fence unless such adjoining occupant pays or tenders to him the value thereof. If such fence be removed without notice or after payment or tender of the value as aforesaid, the person removing the same is liable to the person injured for all damages he may sustain thereby.

History: En. Sec. 1117, 5th Div. Comp. Stat. 1887; re-en. Sec. 3256, Pol. C. 1895; re-en. Sec. 2088, Rev. C. 1907; re-en. Sec. 6781, R.C.M. 1921; re-en. Sec. 6781, R.C.M. 1935; R.C.M. 1947, 67-806.

Part 3

Gratuitous Permittee for Recreation

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Restriction on liability of landowner and supervisor, 23-2-321.

Smith River Management Act, Title 23, ch. 2, part 4.

Liability, Title 27, ch. 1, part 7.

70-16-301. Recreational purposes defined. "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions.

History: En. Sec. 2, Ch. 138, L. 1965; R.C.M. 1947, 67-809; amd. Sec. 1, Ch. 531, L. 1987; amd. Sec. 8, Ch. 264, L. 1993; amd. Sec. 1, Ch. 303, L. 1995.

Cross-References

Recreational use defined, 23-2-301.

70-16-302. Restriction on liability of landowner. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

(2) As used in this part, "landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

(3) As used in this part, "property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(4) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965; R.C.M. 1947, 67-808; amd. Sec. 3, Ch. 209, L. 1987; amd. Sec. 8, Ch. 440, L. 1987; amd. Sec. 2, Ch. 303, L. 1995.

Cross-References

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

Part 4

Right of Reentry

70-16-401. Reentry — when and how to be made. Whenever the right of reentry is given to the grantor or lessor in any grant or lease or otherwise, such reentry may be made at any time after the right has accrued, upon 3 days' notice, as provided in chapter 27.

History: **En. Sec. 1242, Civ. C. 1895; re-en. Sec. 4504, Rev. C. 1907; re-en. Sec. 6746, R.C.M. 1921; Cal. Civ. C. Sec. 791; Based on Field Civ. C. Sec. 243; re-en. Sec. 6746, R.C.M. 1935; R.C.M. 1947, 67-525.**

Cross-References

Forcible entry and detainer — unlawful detainer, Title 70, ch. 27.

70-16-402. Action for possession under right of reentry — notice not required. An action for the possession of real property leased or granted with a right of reentry may be maintained at any time in the district court, after the right to reenter has accrued, without the notice prescribed in 70-16-401.

History: **En. Sec. 1244, Civ. C. 1895; re-en. Sec. 4506, Rev. C. 1907; re-en. Sec. 6748, R.C.M. 1921; Cal. Civ. C. Sec. 793; Field Civ. C. Sec. 244; re-en. Sec. 6748, R.C.M. 1935; R.C.M. 1947, 67-527.**

CHAPTER 17

SERVITUDES, EASEMENTS, AND COVENANTS RUNNING WITH THE LAND

Part 1 — Servitudes—Easements

70-17-101. Servitudes attached to land.
70-17-102. Servitudes not attached to land.
70-17-103. Dominant and servient tenement.
70-17-104. Who may grant servitude.
70-17-105. Who may not hold servitude.
70-17-106. Extent of servitude.
70-17-107. Apportionment of burden upon partition of dominant tenement.
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70-17-111. How servitude extinguished.
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Part 2 — Covenants Running With the Land

70-17-201. Nature and effect.
70-17-202. Covenants specified in this part as exclusive.
70-17-203. What covenants run with the land.
70-17-204. Who bound by covenant.
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70-17-206. Apportionment of burdens and benefits.

Part 3 — Solar and Wind Energy Easements

70-17-301. Creation of solar easements.
70-17-302. Content of solar easements.
70-17-303. Wind energy easement.

Part 1

Servitudes — Easements

Part Cross-References

Implied covenants — free from encumbrance, 70-20-304.

Easements to pass with property, 70-20-308.

Trust Code, Title 72, ch. 33 through 36.

70-17-101. Servitudes attached to land. The following land burdens or servitudes upon land may be attached to other land as incidents or appurtenances and are then called easements:

(1) the right of pasture;
(2) the right of fishing;
(3) the right of taking game;
(4) the right-of-way;
(5) the right of taking water, wood, minerals, and other things;
(6) the right of transacting business upon land;
(7) the right of conducting lawful sports upon land;
(8) the right of receiving air, light, or heat from or over or discharging the same upon or over land;
(9) the right of receiving water from or discharging the same upon land;
(10) the right of flooding land;
(11) the right of having water flow without diminution or disturbance of any kind;
(12) the right of using a wall as a party wall;
(13) the right of receiving more than natural support from adjacent land or things affixed thereto;
(14) the right of having the whole of a division fence maintained by a coterminous owner;
(15) the right of having public conveyances stopped or of stopping the same on land;
(16) the right of a seat in church;
(17) the right of burial;
(18) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land;
(19) the right of receiving sunlight or wind for recognized nonfossil forms of energy generation; and
(20) the right of using land adjacent to a firearms shooting range as a range safety zone.

History: En. Sec. 1250, Civ. C. 1895; re-en. Sec. 4507, Rev. C. 1907; re-en. Sec. 6749, R.C.M. 1921; Cal. Civ. C. Sec. 801; Field Civ. C. Sec. 245; re-en. Sec. 6749, R.C.M. 1935; amd. Sec. 16, Ch. 489, L. 1975; R.C.M. 1947, 67-601; amd. Sec. 1, Ch. 209, L. 1983; amd. Sec. 1, Ch. 111, L. 1993.

Cross-References

Covenants running with land, Title 70, ch. 17, part 2.

70-17-102. Servitudes not attached to land. The following land burdens or servitudes upon land may be granted and held though not attached to land:

(1) the right of pasture and of fishing and taking game;
(2) the right of a seat in church;
(3) the right of burial;
(4) the right of taking rents and tolls;
(5) the right-of-way;
(6) the right of taking water, wood, minerals, or other things;
(7) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land.

History: En. Sec. 1251, Civ. C. 1895; re-en. Sec. 4508, Rev. C. 1907; re-en. Sec. 6750, R.C.M. 1921; Cal. Civ. C. Sec. 802; Based on Field Civ. C. Sec. 246; re-en. Sec. 6750, R.C.M. 1935; amd. Sec. 17, Ch. 489, L. 1975; R.C.M. 1947, 67-602.

70-17-103. Dominant and servient tenement. The land to which an easement is attached is called the dominant tenement. The land upon which a burden or servitude is held is called the servient tenement.

History: En. Sec. 1252, Civ. C. 1895; re-en. Sec. 4509, Rev. C. 1907; re-en. Sec. 6751, R.C.M. 1921; Cal. Civ. C. Sec. 803; Field Civ. C. Sec. 247; re-en. Sec. 6751, R.C.M. 1935; R.C.M. 1947, 67-603.

70-17-104. Who may grant servitude. A servitude can be created only by one who has a vested estate in the servient tenement.

History: En. Sec. 1253, Civ. C. 1895; re-en. Sec. 4510, Rev. C. 1907; re-en. Sec. 6752, R.C.M. 1921; Cal. Civ. C. Sec. 804; Field Civ. C. Sec. 248; re-en. Sec. 6752, R.C.M. 1935; R.C.M. 1947, 67-604.

70-17-105. Who may not hold servitude. A servitude thereon cannot be held by the owner of the servient tenement.

History: En. Sec. 1254, Civ. C. 1895; re-en. Sec. 4511, Rev. C. 1907; re-en. Sec. 6753, R.C.M. 1921; Cal. Civ. C. Sec. 805; Field Civ. C. Sec. 249; re-en. Sec. 6753, R.C.M. 1935; R.C.M. 1947, 67-605.

70-17-106. Extent of servitude. The extent of a servitude is determined by the terms of the grant or the nature of the enjoyment by which it was acquired.

History: En. Sec. 1255, Civ. C. 1895; re-en. Sec. 4512, Rev. C. 1907; re-en. Sec. 6754, R.C.M. 1921; Cal. Civ. C. Sec. 806; Field Civ. C. Sec. 250; re-en. Sec. 6754, R.C.M. 1935; R.C.M. 1947, 67-606.

70-17-107. Apportionment of burden upon partition of dominant tenement. In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement but not in such a way as to increase the burden upon the servient tenement.

History: En. Sec. 1256, Civ. C. 1895; re-en. Sec. 4513, Rev. C. 1907; re-en. Sec. 6755, R.C.M. 1921; Cal. Civ. C. Sec. 807; Field Civ. C. Sec. 251; re-en. Sec. 6755, R.C.M. 1935; R.C.M. 1947, 67-607.

70-17-108. Rights of owner of future estate in dominant tenement. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements although such tenement is occupied by a tenant.

History: En. Sec. 1257, Civ. C. 1895; re-en. Sec. 4514, Rev. C. 1907; re-en. Sec. 6756, R.C.M. 1921; Cal. Civ. C. Sec. 808; Field Civ. C. Sec. 252; re-en. Sec. 6756, R.C.M. 1935; R.C.M. 1947, 67-608.

70-17-109. Who may bring action to enforce easement. The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

History: En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; R.C.M. 1947, 62-617.

70-17-110. Action by owner of servient tenement for possession. The owner in fee of a servient tenement may maintain an action for the possession of the land against any one unlawfully possessed thereof though a servitude exists thereon in favor of the public.

History: En. Sec. 1259, Civ. C. 1895; re-en. Sec. 4516, Rev. C. 1907; re-en. Sec. 6758, R.C.M. 1921; Cal. Civ. C. Sec. 810; Field Civ. C. Sec. 254; re-en. Sec. 6758, R.C.M. 1935; R.C.M. 1947, 67-610.

70-17-111. How servitude extinguished. A servitude is extinguished:

(1) by the vesting of the right to the servitude and the right to the servient tenement in the same person;

(2) by the destruction of the servient tenement;

(3) by the performance of any act upon either tenement by the owner of the servitude or with his assent which is incompatible with its nature or exercise; or

(4) when the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

History: En. Sec. 1260, Civ. C. 1895; re-en. Sec. 4517, Rev. C. 1907; re-en. Sec. 6759, R.C.M. 1921; Cal. Civ. C. Sec. 811; Field Civ. C. Sec. 255; re-en. Sec. 6759, R.C.M. 1935; R.C.M. 1947, 67-611.

70-17-112. Interference with canal or ditch easements prohibited. (1) A person with a canal or ditch easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch.

(2) No person may encroach upon or otherwise impair any easement for a canal or ditch used for irrigation or any other lawful domestic or commercial purpose, including carrying return water.

(3) The provisions of subsection (2) do not apply if the holder of the canal or ditch easement consents in writing to the encroachment or impairment.

(4) Each canal or ditch easement obtained by prescription or conveyance is included within the scope of this section. Nothing in this section establishes a secondary easement where none existed prior to April 14, 1981. This section does not affect contracts or agreements concluded prior to April 14, 1981.

(5) If a legal action is brought to enforce the provisions of this section, the prevailing party is entitled to costs and reasonable attorney's fees.

History: En. Sec. 1, Ch. 371, L. 1981.

Cross-References

Obstruction as nuisance, 27-30-101.

Part 2

Covenants Running With the Land

Part Cross-References

Breach of covenants in grants of estates in real property, 27-1-316.

Joint obligations and covenants to be taken as joint and several, 28-1-302.

What included in authority to sell real property, 28-10-422.

Usual common-law covenants required by such contracts — when, 30-11-109.

Form of covenants, 30-11-110.

70-17-201. Nature and effect. Certain covenants contained in grants of estates in real property are appurtenant to such estates and pass with them so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

History: En. Sec. 1983, Civ. C. 1895; re-en. Sec. 4914, Rev. C. 1907; re-en. Sec. 7416, R.C.M. 1921; Cal. Civ. C. Sec. 1460; Field Civ. C. Sec. 691; re-en. Sec. 7416, R.C.M. 1935; R.C.M. 1947, 58-304.

70-17-202. Covenants specified in this part as exclusive. The only covenants which run with the land are those specified in this part and those which are incidental thereto.

History: En. Sec. 1984, Civ. C. 1895; re-en. Sec. 4915, Rev. C. 1907; re-en. Sec. 7417, R.C.M. 1921; Cal. Civ. C. Sec. 1461; Field Civ. C. Sec. 692; re-en. Sec. 7417, R.C.M. 1935; R.C.M. 1947, 58-305.

Cross-References

Easements to run with land, 76-6-209.

70-17-203. What covenants run with the land. (1) Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property or some part of it then in existence, runs with the land.

(2) Subsection (1) includes covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far as the assigns thus mentioned are concerned.

History: En. Secs. 1985, 1986, 1987, Civ. C. 1895; re-en. Secs. 4916, 4917, 4918, Rev. C. 1907; re-en. Secs. 7418, 7419, 7420, R.C.M. 1921; Cal. Civ. C. Secs. 1462, 1463, 1464; Field Civ. C. Secs. 693, 694, 695; re-en. Secs. 7418, 7419, 7420, R.C.M. 1935; R.C.M. 1947, 58-306, 58-307, 58-308.

Cross-References

Easements to run with land, 76-6-209.

70-17-204. Who bound by covenant. A covenant running with the land binds only those who acquire the whole estate of the covenantor in some part of the property.

History: En. Sec. 1988, Civ. C. 1895; re-en. Sec. 4919, Rev. C. 1907; re-en. Sec. 7421, R.C.M. 1921; Cal. Civ. C. Sec. 1465; Field Civ. C. Sec. 696; re-en. Sec. 7421, R.C.M. 1935; R.C.M. 1947, 58-309.

70-17-205. Nonliability for prior or subsequent breach. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate or after he has parted with it or ceased to enjoy its benefits.

History: En. Sec. 1989, Civ. C. 1895; re-en. Sec. 4920, Rev. C. 1907; re-en. Sec. 7422, R.C.M. 1921; Cal. Civ. C. Sec. 1466; Field Civ. C. Sec. 697; re-en. Sec. 7422, R.C.M. 1935; R.C.M. 1947, 58-310.

70-17-206. Apportionment of burdens and benefits. Where several persons holding by several titles are subject to the burden or entitled to the benefits of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively if such value can be ascertained and, if not, then according to their respective interests in point of quantity.

History: En. Sec. 1990, Civ. C. 1895; re-en. Sec. 4921, Rev. C. 1907; re-en. Sec. 7423, R.C.M. 1921; Cal. Civ. C. Sec. 1467; Field Civ. C. Sec. 698; re-en. Sec. 7423, R.C.M. 1935; R.C.M. 1947, 58-311.

Part 3
Solar and Wind Energy Easements

Part Cross-References

Right of receiving sunlight or wind as servitude creating easement, 70-17-101.

70-17-301. Creation of solar easements. An easement obtained for the purpose of exposure of a solar energy device must be created in writing and is subject to the same conveyancing and instrument recording requirements as other easements on real property.

History: **En. Sec. 1, Ch. 524, L. 1979.**

70-17-302. Content of solar easements. An instrument creating a solar easement must specify at least:

(1) the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement; and

(2) any terms or conditions under which the solar easement is granted or will be terminated.

History: **En. Sec. 2, Ch. 524, L. 1979.**

70-17-303. Wind energy easement. (1) An easement obtained for the purpose of insuring the undisturbed flow of wind across the real property of another must be created in writing and is subject to the same conveyancing and instrument recording requirements as other easements on real property.

(2) An instrument creating a wind energy easement must include:

(a) a legal description of the real property benefited and burdened by the easement;

(b) a description of the dimensions of the easement sufficient to determine the horizontal space across and the vertical space above the burdened property that must remain unobstructed;

(c) the restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the windflow across and through the easement; and

(d) the terms or conditions, if any, under which the easement may be changed or terminated.

History: **En. Sec. 2, Ch. 209, L. 1983.**

CHAPTER 18

REAL PROPERTY — ACCESSION FIXTURES AND WATERCOURSES

Part 1 — Fixtures

70-18-101. Fixture attached by other — accession by owner.
70-18-102. Removal of fixture by tenant.

Part 2 — Watercourses

70-18-201. Alluvion or accretion — increase of bank.
70-18-202. Sudden removal of bank — right of owner to reclaim.
70-18-203. Island formed in navigable stream.

70-18-204. Island formed in nonnavigable stream.
70-18-205. Island formed by division of stream.

Part 1
Fixtures

70-18-101. Fixture attached by other — accession by owner. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in 70-18-102 and in the Uniform Commercial Code, belongs to the owner of the land unless he chooses to require the former to remove it.

History: En. Sec. 1400, Civ. C. 1895; re-en. Sec. 4572, Rev. C. 1907; re-en. Sec. 6819, R.C.M. 1921; Cal. Civ. C. Sec. 1013; Based on Field Civ. C. Sec. 442; re-en. Sec. 6819, R.C.M. 1935; amd. Sec. 11-146, Ch. 264, L. 1963; R.C.M. 1947, 67-1301.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

70-18-102. Removal of fixture by tenant. A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use if the removal can be effected without injury to the premises unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

History: En. Sec. 1406, Civ. C. 1895; re-en. Sec. 4578, Rev. C. 1907; re-en. Sec. 6825, R.C.M. 1921; Cal. Civ. C. Sec. 1019; re-en. Sec. 6825, R.C.M. 1935; R.C.M. 1947, 67-1307.

Part 2
Watercourses

70-18-201. Alluvion or accretion — increase of bank. Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right-of-way over the bank.

History: En. Sec. 1401, Civ. C. 1895; re-en. Sec. 4573, Rev. C. 1907; re-en. Sec. 6820, R.C.M. 1921; Cal. Civ. C. Sec. 1014; Field Civ. C. Sec. 443; re-en. Sec. 6820, R.C.M. 1935; R.C.M. 1947, 67-1302.

70-18-202. Sudden removal of bank — right of owner to reclaim. If a river or stream, navigable or not navigable, carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

History: En. Sec. 1402, Civ. C. 1895; re-en. Sec. 4574, Rev. C. 1907; re-en. Sec. 6821, R.C.M. 1921; Cal. Civ. C. Sec. 1015; Field Civ. C. Sec. 444; re-en. Sec. 6821, R.C.M. 1935; R.C.M. 1947, 67-1303.

70-18-203. Island formed in navigable stream. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state if there is no title or prescription to the contrary.

History: En. Sec. 1403, Civ. C. 1895; re-en. Sec. 4575, Rev. C. 1907; re-en. Sec. 6822, R.C.M. 1921; Cal. Civ. C. Sec. 1016; Field Civ. C. Sec. 445; re-en. Sec. 6822, R.C.M. 1935; R.C.M. 1947, 67-1304.

70-18-204. Island formed in nonnavigable stream. An island or accumulation of land formed in a stream which is not navigable belongs to the owner of the shore on that side where the island or accumulation is formed or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

History: En. Sec. 1404, Civ. C. 1895; re-en. Sec. 4576, Rev. C. 1907; re-en. Sec. 6823, R.C.M. 1921; Cal. Civ. C. Sec. 1017; Field Civ. C. Sec. 446; re-en. Sec. 6823, R.C.M. 1935; R.C.M. 1947, 67-1305.

70-18-205. Island formed by division of stream. If a stream navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner.

History: En. Sec. 1405, Civ. C. 1895; re-en. Sec. 4577, Rev. C. 1907; re-en. Sec. 6824, R.C.M. 1921; Cal. Civ. C. Sec. 1018; Field Civ. C. Sec. 447; re-en. Sec. 6824, R.C.M. 1935; R.C.M. 1947, 67-1306.

CHAPTER 19

REAL PROPERTY ACTIONS GENERALLY LIMITATIONS AND ADVERSE POSSESSION

Part 1 — General Provisions

70-19-101. Action defined.
70-19-102. Action affecting title or possession — filing as constructive notice.
70-19-103. Action for recovery of possession not prejudiced by alienation.

Part 2 — Actions Relating to Mining Claims

70-19-201. Actions concerning mining claims governed by local rules.
70-19-202. Abuse of property held jointly or in common — action — mining property.
70-19-203. Adverse claims under acts of congress.
70-19-204. Order for inspection or survey.

Part 3 — Provisions and Limitations Relating to the State of Montana

70-19-301. Application to lands conveyed by state.
70-19-302. Statute of limitations for state actions concerning real property.
70-19-303. Statute of limitations for actions by grantee — joinder of state.
70-19-304. Statute of limitations for action for recovery of property under void conveyance from state.
70-19-305. Certificate of purchase from state or United States prima facie evidence of ownership.

Part 4 — Limitations and Adverse Possession

70-19-401. Action for recovery — possession within 5 years required.
70-19-402. Action or defense arising out of title to property or profits — possession within 5 years required.
70-19-403. When action on claim by entry must be commenced.
70-19-404. Presumption of possession within prescribed period — adverse possession as exception.
70-19-405. Title by prescription.
70-19-406. Simple occupancy.
70-19-407. Occupancy under claim founded on instrument or judgment — when considered adverse.

70-19-408. Claim founded on instrument or judgment — what considered possession and occupation.
70-19-409. Actual occupancy under claim of title not founded on instrument or judgment — adverse.
70-19-410. Claim of title not founded on instrument or judgment — what considered occupation.
70-19-411. Occupancy and payment of taxes necessary to prove adverse possession.
70-19-412. Relation of landlord and tenant as affecting adverse possession.
70-19-413. Certain disabilities to suspend running of statutory period.
70-19-414. Right of possession not affected by descent cast.
70-19-415 through 70-19-420 reserved.
70-19-421. Action to recover royalty interest in land sold for taxes.

Chapter Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Part 1

General Provisions

70-19-101. Action defined. The word "action", as used in parts 3 and 4, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

History: En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; R.C.M. 1947, 93-2720.

Cross-References

Actions and special proceedings defined, 27-1-102.

70-19-102. Action affecting title or possession — filing as constructive notice. (1) In an action affecting the title or right of possession of real property or in an action between husband and wife, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterward may file in the office of the clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the names of the parties and the object of the action or defense and a description of the property in that county affected thereby.

(2) From the time of filing of such notice only shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action and only of its pendency against parties designated by their real names.

History: En. Sec. 27, p. 48, Bannack Stat.; re-en. Sec. 27, p. 139, L. 1867; re-en. Sec. 33, p. 33, Cod. Stat. 1871; amd. Sec. 70, p. 55, L. 1877; re-en. Sec. 70, 1st Div. Rev. Stat. 1879; re-en. Sec. 70, 1st Div. Comp. Stat. 1887; amd. Sec. 634, C. Civ. Proc. 1895; re-en. Sec. 6517, Rev. C. 1907; re-en. Sec. 9109, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 409; re-en. Sec. 9109, R.C.M. 1935; R.C.M. 1947, 93-3005.

Cross-References

Quieting title to real property — notice of action to be filed with Clerk and Recorder, 70-28-106.

Quieting title to real property — recording of notice by plaintiff and defendant, 70-28-213.

Partition of real property — notice of action to be filed with Clerk and Recorder — lis pendens, 70-29-109.

70-19-103. Action for recovery of possession not prejudiced by alienation. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

History: En. Sec. 241, p. 93, Bannack Stat.; re-en. Sec. 263, p. 188, L. 1867; re-en. Sec. 312, p. 95, L. 1871; re-en. Sec. 362, p. 139, L. 1877; re-en. Sec. 362, 1st Div. Rev. Stat. 1879; re-en. Sec. 374, 1st Div. Comp. Stat. 1887; re-en. Sec. 1320, C. Civ. Proc. 1895; re-en. Sec. 6880, Rev. C. 1907; re-en. Sec. 9498, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 747; re-en. Sec. 9498, R.C.M. 1935; R.C.M. 1947, 93-6222.

Part 2

Actions Relating to Mining Claims

Part Cross-References

Mining generally, Title 82, ch. 2.

70-19-201. Actions concerning mining claims governed by local rules. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this state or the United States, must govern the decision of the action.

History: En. Sec. 363, p. 139, L. 1877; re-en. Sec. 363, 1st Div. Rev. Stat. 1879; re-en. Sec. 375, 1st Div. Comp. Stat. 1887; amd. Sec. 1321, C. Civ. Proc. 1895; re-en. Sec. 6881, Rev. C. 1907; re-en. Sec. 9499, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 748; re-en. Sec. 9499, R.C.M. 1935; R.C.M. 1947, 93-6223.

70-19-202. Abuse of property held jointly or in common — action — mining property. If any person shall assume and exercise exclusive ownership over or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy or tenancy in common, the party aggrieved shall have his action for the injury in the same manner as he would have if such joint tenancy or tenancy in common did not exist; provided that nothing herein contained shall prevent one cotenant or joint tenant or any number of cotenants or joint tenants acting together less than all from entering on the common property at any point or points not then in the actual occupancy of the nonjoining cotenants or joint tenants and enjoying all rights of occupancy of the property, without waste and, in the case of mining property, from mining the same in a minerlike manner and extracting, milling, and disposing of the ore from the common property, paying its or their own expenses and subject to accounting to the nonjoining cotenant or joint tenant for the net profits of such mining operations, if any made, and all liens for labor and materials incurred in such mining shall attach only to the undivided interest or interests of the working cotenants or joint tenants, but nothing herein shall prevent or preclude the cotenant or joint tenant, not joining in the operation of such mining property, from receiving his, its, or their proportionate share of all ore or ores on the dump upon payment or tendering payment of the actual cost of mining the same.

History: En. Sec. 2, p. 454, Bannack Stat.; re-en. Sec. 2, p. 504, Cod. Stat. 1871; re-en. Sec. 771, 5th Div. Rev. Stat. 1879; re-en. Sec. 1285, 5th Div. Comp. Stat. 1887; amd. Sec. 592, C. Civ. Proc. 1895; en. Sec. 1, p. 134, L. 1899; re-en. Sec. 6499, Rev. C. 1907; re-en. Sec. 9091, R.C.M. 1921; re-en. Sec. 9091, R.C.M. 1935; R.C.M. 1947, 93-2829.

70-19-203. Adverse claims under acts of congress. In an action brought to determine the respective rights of claimants to the possession of a mining claim or quartz lode under the provisions of the acts of congress of the United States, it is immaterial which party is in possession, and it is sufficient to confer jurisdiction upon the court if it appears from the pleadings that the application for a patent has been made and an adverse claim thereto filed and allowed in the proper land office, and the verdict or decision must find which party is entitled to the possession of the premises in dispute.

History: **En. Sec. 1322, C. Civ. Proc. 1895; re-en. Sec. 6882, Rev. C. 1907; re-en. Sec. 9500, R.C.M. 1921; re-en. Sec. 9500, R.C.M. 1935; R.C.M. 1947, 93-6224.**

Cross-References

Quieting title — cost if defendant disclaims, 70-28-112.

70-19-204. Order for inspection or survey. (1) Whenever any person shall have any right to or interest in any lead, lode, or mining claim which is in the possession of another person and it shall be necessary for the ascertainment, enforcement, or protection of such right or interest that an inspection, examination, or survey of such lead, mine, lode, or mining claim should be had or made or whenever any inspection, examination, or survey of any such lode or mining claim shall be necessary to protect, ascertain, or enforce the right or interest of any person in another mine, lode, or mining claim and the person in possession of the same shall refuse for a period of 3 days after demand therefor in writing to allow such inspection, examination, or survey to be had or made, the party so desiring the same may present to the district court or a judge thereof of the county wherein the mine, lead, lode, or mining claim is situated a petition under oath setting out his interest in the premises, describing the same, that the premises are in the possession of a party, naming him, the reason why such examination, inspection, or survey is necessary, the demand made on the person in possession so to permit such examination, inspection, or survey, and his refusal so to do.

(2) The court or judge shall thereupon appoint a time and place for hearing such petition and shall order notice thereof to be served upon the adverse party, which notice shall be served at least 1 day before the day of hearing. On the hearing either party may read affidavits or produce oral testimony, and if the court or judge is satisfied that the facts stated in the petition are true, he shall make an order for an inspection, examination, or survey of the lode or mining claim in question in such manner, at such time, and by such persons as are mentioned in the order. Such person shall thereupon have free access to such mine, lead, lode, or mining claim for the purpose of making such inspection, examination, or survey, and any interference with such person while acting under such order shall be contempt of court.

(3) If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order shall abide the result of the action, but all costs of making such examination or survey shall be paid by the petitioner.

History: **En. Sec. 8, p. 10, L. 1881; re-en. Sec. 376, 1st Div. Comp. Stat. 1887; re-en. Sec. 1317, C. Civ. Proc. 1895; re-en. Sec. 6876, Rev. C. 1907; re-en. Sec. 9494, R.C.M. 1921; re-en. Sec. 9494, R.C.M. 1935; R.C.M. 1947, 93-6218.**

Part 3

Provisions and Limitations Relating to the State of Montana

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Sales of state lands, Title 77, ch. 2, part 3.

70-19-301. Application to lands conveyed by state. The provisions of parts 3 and 4 shall apply to all lands sold and conveyed before July 1, 1955, by the state of Montana for which a valid consideration was received by the state; provided that the state, at the time of any such sale or conveyance, was not precluded by the constitution of Montana or by the terms of the grant of such lands by the United States from selling and disposing of the same; and provided further, that no occupant of a public way or other ground dedicated or appropriated by the state to public use and not subject to sale shall acquire by reason of his occupancy any title thereto.

History: En. Sec. 1, Ch. 195, L. 1955; R.C.M. 1947, 93-2516.

70-19-302. Statute of limitations for state actions concerning real property. The state will not sue any person for or in respect to any real property or the issues or profits thereof by reason of the right or title of the state to the same unless:

(1) such right or title shall have accrued within 10 years before any action or other proceeding for the same is commenced; or

(2) the state or those from whom it claims shall have received the rents and profits of such real property or of some part thereof within the space of 10 years.

History: En. Sec. 480, C. Civ. Proc. 1895; re-en. Sec. 6429, Rev. C. 1907; re-en. Sec. 9012, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 315; re-en. Sec. 9012, R.C.M. 1935; R.C.M. 1947, 93-2501.

70-19-303. Statute of limitations for actions by grantee — joinder of state. (1) No action can be brought for or in respect to real property by any person claiming under letters patent or grants from this state unless the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the property in question within 10 years before the commencement of the action.

(2) In any such action the state of Montana may be made a party defendant and shall have only the defenses thereto as are available to other parties defendant to the action, provided that no judgment in any such action shall include damages, attorney fees, or court costs against the state of Montana.

History: En. Sec. 481, C. Civ. Proc. 1895; re-en. Sec. 6430, Rev. C. 1907; re-en. Sec. 9013, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 316; re-en. Sec. 9013, R.C.M. 1935; amd. Sec. 1, Ch. 196, L. 1955; R.C.M. 1947, 93-2502.

70-19-304. Statute of limitations for action for recovery of property under void conveyance from state. When letters patent or grants of real property issued or made by the state are declared void by the determination of a competent court, an action for the recovery of the property so conveyed may be brought, either by the state or by any subsequent patentee or grantee of the property, his heirs, or assigns, within 10 years after such determination, but not after that period.

History: En. Sec. 482, C. Civ. Proc. 1895; re-en. Sec. 6431, Rev. C. 1907; re-en. Sec. 9014, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 317; re-en. Sec. 9014, R.C.M. 1935; R.C.M. 1947, 93-2503.

Cross-References

Actions arising from seizure or sale of property for taxes, 27-2-210.

70-19-305. Certificate of purchase from state or United States prima facie evidence of ownership. A certificate of purchase or of location of any lands in this state issued or made in pursuance of any law of the United States or of this state is prima facie evidence that the holder or assignee of such certificate is the owner of the land described therein, but this evidence may be overcome by proof that at the time of the location or time of filing a preemption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party or those under whom he claims or that the adverse party is holding the land for mining purposes.

History: En. Sec. 3213, C. Civ. Proc. 1895; re-en. Sec. 7931, Rev. C. 1907; re-en. Sec. 10575, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1925; re-en. Sec. 10575, R.C.M. 1935; R.C.M. 1947, 93-1001-37.

Part 4

Limitations and Adverse Possession

Part Cross-References

Wrongful occupation of real property, 27-1-318.

Actions arising from seizure or sale of property for taxes, 27-2-210.

70-19-401. Action for recovery — possession within 5 years required. No action for the recovery of real property or for the possession thereof can be maintained unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the property in question within 5 years before the commencement of the action.

History: En. Sec. 29, p. 45, L. 1877; re-en. Sec. 29, 1st Div. Rev. Stat. 1879; re-en. Sec. 29, 1st Div. Comp. Stat. 1887; amd Sec. 483, C. Civ. Proc. 1895; re-en. Sec. 6432, Rev. C. 1907; re-en. Sec. 9015, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 318; re-en. Sec. 9015, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1953; amd. Sec. 12, Ch. 263, L. 1975; R.C.M. 1947, 93-2504.

70-19-402. Action or defense arising out of title to property or profits — possession within 5 years required. No cause of action or defense to an action, arising out of the title to real property or to rents or profits out of the same, can be effectual unless it appear that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question within 5 years before the commencement of the act in respect to which such action is prosecuted or defense made.

History: En. Sec. 30, p. 45, L. 1877; re-en. Sec. 30, 1st Div. Rev. Stat. 1879; re-en. Sec. 30, 1st Div. Comp. Stat. 1887; amd. Sec. 484, C. Civ. Proc. 1895; re-en. Sec. 6433, Rev. C. 1907; re-en. Sec. 9016, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 319; re-en. Sec. 9016, R.C.M. 1935; amd. Sec. 2, Ch. 224, L. 1953; R.C.M. 1947, 93-2505.

70-19-403. When action on claim by entry must be commenced. No entry upon real estate is deemed sufficient or valid as a claim unless an action be commenced thereupon within 1 year after making such entry and within 5 years from the time when the right to make it descended or accrued.

History: En. Sec. 3, p. 466, Bannack Stat.; re-en. Sec. 3, p. 515, Cod. Stat. 1871; amd. Sec. 31, p. 46, L. 1877; re-en. Sec. 31, 1st Div. Rev. Stat. 1879; re-en. Sec. 31, 1st Div. Comp. Stat. 1887; amd. Sec. 485, C. Civ. Proc. 1895; re-en. Sec. 6434, Rev. C. 1907; re-en. Sec. 9017, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 320; re-en. Sec. 9017, R.C.M. 1935; amd. Sec. 3, Ch. 224, L. 1953; R.C.M. 1947, 93-2506.

70-19-404. Presumption of possession within prescribed period — adverse possession as exception. In every action for the recovery of real property or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title unless it appear that the property has been held and possessed adversely to such legal title for 5 years before the commencement of the action.

History: En. Sec. 4, p. 466, Bannack Stat.; re-en. Sec. 4, p. 515, Cod. Stat. 1871; amd. Sec. 32, p. 46, L. 1877; re-en. Sec. 32, 1st Div. Rev. Stat. 1879; re-en. Sec. 32, 1st Div. Comp. Stat. 1887; amd. Sec. 486, C. Civ. Proc. 1895; re-en. Sec. 6435, Rev. C. 1907; re-en. Sec. 9018, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 321; re-en. Sec. 9018, R.C.M. 1935; amd. Sec. 4, Ch. 224, L. 1953; R.C.M. 1947, 93-2507.

70-19-405. Title by prescription. Except as provided in 23-2-322, occupancy for the period prescribed by this chapter as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

History: En. Sec. 1391, Civ. C. 1895; re-en. Sec. 4571, Rev. C. 1907; re-en. Sec. 6818, R.C.M. 1921; Cal. Civ. C. Sec. 1007; Field Civ. C. Sec. 441; re-en. Sec. 6818, R.C.M. 1935; R.C.M. 1947, 67-1203; amd. Sec. 6, Ch. 556, L. 1985.

Cross-References

Prescriptive easement not acquired by recreational use of surface waters, 23-2-322.

70-19-406. Simple occupancy. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession.

History: En. Sec. 1390, Civ. C. 1895; re-en. Sec. 4570, Rev. C. 1907; re-en. Sec. 6817, R.C.M. 1921; Cal. Civ. C. Sec. 1006; Field Civ. C. Sec. 440; re-en. Sec. 6817, R.C.M. 1935; R.C.M. 1947, 67-1202.

70-19-407. Occupancy under claim founded on instrument or judgment — when considered adverse. When it appears that the occupant or those under whom he claims entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument as being a conveyance of the property in question or upon the decree or judgment of a competent court and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment or of some part of the property under such claim for 5 years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

History: En. Sec. 33, p. 46, L. 1877; re-en. Sec. 33, 1st Div. Rev. Stat. 1879; re-en. Sec. 33, 1st Div. Comp. Stat. 1887; amd. Sec. 487, C. Civ. Proc. 1895; re-en. Sec. 6436, Rev. C. 1907; re-en. Sec. 9019, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 322; re-en. Sec. 9019, R.C.M. 1935; amd. Sec. 5, Ch. 224, L. 1953; R.C.M. 1947, 93-2508.

70-19-408. Claim founded on instrument or judgment — what considered possession and occupation. (1) For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

(a) where it has been usually cultivated or improved;

(b) where it has been protected by a substantial enclosure;

(c) where although not enclosed it has been used for the supply of fuel or of fencing timber, either for the purpose of husbandry or for pasturage or for the ordinary use of the occupant.

(2) Where a known farm or a single lot has been partly improved, the portion of such farm or lot that has been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

History: En. Sec. 5, p. 466, Bannack Stat.; re-en. Sec. 5, p. 516, Cod. Stat. 1871; amd. Sec. 34, p. 46, L. 1877; re-en. Sec. 34, 1st Div. Rev. Stat. 1879; re-en. Sec. 34, 1st Div. Comp. Stat. 1887; amd. Sec. 488, C. Civ. Proc. 1895; re-en. Sec. 6437, Rev. C. 1907; re-en. Sec. 9020, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 323; re-en. Sec. 9020, R.C.M. 1935; R.C.M. 1947, 93-2509.

70-19-409. Actual occupancy under claim of title not founded on instrument or judgment — adverse. Where it appears that there has been an actual continued occupation of land under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied and no other is deemed to have been held adversely.

History: En. Sec. 6, p. 467, Bannack Stat.; re-en. Sec. 6, p. 516, Cod. Stat. 1871; re-en. Sec. 35, p. 46, L. 1877; re-en. Sec. 35, 1st Div. Rev. Stat. 1879; re-en. Sec. 35, 1st Div. Comp. Stat. 1887; amd. Sec. 489, C. Civ. Proc. 1895; re-en. Sec. 6438, Rev. C. 1907; re-en. Sec. 9021, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 324; re-en. Sec. 9021, R.C.M. 1935; R.C.M. 1947, 93-2510.

70-19-410. Claim of title not founded on instrument or judgment — what considered occupation. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

(1) where it has been protected by a substantial enclosure;

(2) where it has been usually cultivated or improved.

History: En. Sec. 7, p. 467, Bannack Stat.; re-en. Sec. 7, p. 516, Cod. Stat. 1871; amd. Sec. 36, p. 47, L. 1877; re-en. Sec. 36, 1st Div. Rev. Stat. 1879; re-en. Sec. 36, 1st Div. Comp. Stat. 1887; re-en. Sec. 490, C. Civ. Proc. 1895; re-en. Sec. 6439, Rev. C. 1907; re-en. Sec. 9022, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 325; re-en. Sec. 9022, R.C.M. 1935; R.C.M. 1947, 93-2511.

70-19-411. Occupancy and payment of taxes necessary to prove adverse possession. In no case shall adverse possessions be considered established under this code unless it shall be shown that the land has been occupied and claimed for a period of 5 years continuously and the party or persons, their predecessors, and grantors have during such period paid all the taxes, state, county, or municipal, which have been legally levied and assessed upon said land.

History: En. Sec. 1, Ch. 3, L. 1917; re-en. Sec. 9024, R.C.M. 1921; re-en. Sec. 9024, R.C.M. 1935; amd. Sec. 7, Ch. 224, L. 1953; R.C.M. 1947, 93-2513.

70-19-412. Relation of landlord and tenant as affecting adverse possession. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of 5 years from the termination of the tenancy or, where there has been no written lease, until the expiration of 5 years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods prescribed in this section.

History: En. Sec. 37, p. 47, L. 1877; re-en. Sec. 37, 1st Div. Rev. Stat. 1879; re-en. Sec. 37, 1st Div. Comp. Stat. 1887; amd. Sec. 491, C. Civ. Proc. 1895; re-en. Sec. 6440, Rev. C. 1907; re-en. Sec. 9023, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 326; re-en. Sec. 9023, R.C.M. 1935; amd. Sec. 6, Ch. 224, L. 1953; R.C.M. 1947, 93-2512.

Cross-References

The Montana Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.

70-19-413. Certain disabilities to suspend running of statutory period. (1) Subsection (2) applies if a person entitled to commence an action for the recovery of real property or for the recovery of the possession of real property or to make any entry or defense founded on the title to real property or to rents or services out of the same is, at the same time the title first descends or accrues:

(a) under the age of majority;

(b) committed pursuant to 53-21-127; or

(c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term of less than for life.

(2) The time during which disability continues is not considered any portion of the time in this chapter limited for the commencement of the action or the making of the entry or defense. The action may be commenced or entry or defense made within the period of 5 years after the disability ceases or after the death of the person entitled who dies under the disability, but the action may not be commenced or entry or defense made after that period.

History: En. Sec. 39, p. 48, L. 1877; re-en. Sec. 39, 1st Div. Rev. Stat. 1879; re-en. Sec. 39, 1st Div. Comp. Stat. 1887; amd. Sec. 493, C. Civ. Proc. 1895; re-en. Sec. 6442, Rev. C. 1907; re-en. Sec. 9026, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 328; re-en. Sec. 9026, R.C.M. 1935; amd. Sec. 8, Ch. 224, L. 1953; R.C.M. 1947, 93-2515; amd. Sec. 6, Ch. 115, L. 1979; amd. Sec. 181, Ch. 575, L. 1981; amd. Sec. 35, Ch. 490, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 490 in (1)(b) substituted "committed pursuant to 53-21-127" for "seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

70-19-414. Right of possession not affected by descent cast. The right of a person to the possession of real property is not impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

History: En. Sec. 38, p. 48, L. 1877; re-en. Sec. 38, 1st Div. Rev. Stat. 1879; re-en. Sec. 38, 1st Div. Comp. Stat. 1887; re-en. Sec. 492, C. Civ. Proc. 1895; re-en. Sec. 6441, Rev. C. 1907; re-en. Sec. 9025, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 327; re-en. Sec. 9025, R.C.M 1935; R.C.M. 1947, 93-2514.

70-19-415 through 70-19-420 reserved.

70-19-421. Action to recover royalty interest in land sold for taxes. An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210.

History: **En. Sec. 4, Ch. 458, L. 1985.**

Cross-References

Deed of conveyance — reservation of mineral royalty interest, 7-8-2305.

CHAPTER 20

TRANSFER OF REAL PROPERTY

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70-20-404. Purchaser in good faith not affected.
70-20-405. Other provisions on unlawful transfers — where found.

Chapter Cross-References

Breach of agreement to convey real property, 27-1-314.

Breach of agreement to buy real property, 27-1-315.

Breach of covenants in grants of estates in real property, 27-1-316.

Montana Title Insurance Act, Title 33, ch. 25.

Transfer of property — grants and their interpretation, Title 70, ch. 1, part 5.

Small tract financing — trust indentures, Title 71, ch. 1, part 3.

Part 1
Method of Transfer

70-20-101. Transfer to be in writing — statute of frauds. No estate or interest in real property, other than an estate at will or for a term not exceeding 1 year can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by his lawful agent thereunto authorized by writing.

History: En. Sec. 6, p. 393, Cod. Stat. 1871; re-en. Sec. 160, 5th Div. Rev. Stat. 1879; re-en. Sec. 217, 5th Div. Comp. Stat. 1887; re-en. Sec. 3274, C. Civ. Proc. 1895; re-en. Sec. 7967, Rev. C. 1907; re-en. Sec. 10611, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1971; re-en. Sec. 10611, R.C.M. 1935; R.C.M. 1947, 93-1401-5; amd. Sec. 7, Ch. 115, L. 1979; amd. Sec. 218, Ch. 685, L. 1989.

Cross-References

What contracts must be in writing, 28-2-903.

70-20-102. Exceptions to statute of frauds. Section 70-20-101 must not be construed to:

(1) affect the power of a testator in the disposition of his real property by a last will and testament;

(2) prevent any trust from arising or being extinguished by implication or operation of law; or

(3) abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

History: En. Sec. 7, p. 393, Cod. Stat. 1871; re-en. Sec. 161, 5th Div. Rev. Stat. 1879; re-en. Sec. 218, 5th Div. Comp. Stat. 1887; re-en. Sec. 3275, C. Civ. Proc. 1895; re-en. Sec. 7968, Rev. C. 1907; re-en. Sec. 10612, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1972; re-en. Sec. 10612, R.C.M. 1935; R.C.M. 1947, 93-1401-6.

Cross-References

Specific and preventive relief, Title 27, ch. 1, part 4.

Wills, will contracts, and custody and deposit of wills, Title 72, ch. 2, part 5.

Judicial proceedings concerning trusts, Title 72, ch. 35.

70-20-103. Form of grant. A grant of an estate in real property may be made in substance as follows:

"I, A.B., in consideration of .... dollars now paid, grant to C.D. all the real property situated in (insert name of county) County, state of Montana, bounded (or described) as follows: (Here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name as, for instance, "the Norris ranch".)

Witness my hand this (insert day) day of (insert month), 19...

....

A.B."

History: En. Sec. 1501, Civ. C. 1895; re-en. Sec. 4613, Rev. C. 1907; re-en. Sec. 6860, R.C.M. 1921; Cal. Civ. C. Sec. 1092; re-en. Sec. 6860, R.C.M. 1935; R.C.M. 1947, 67-1602.

70-20-104. Words of inheritance unnecessary. Words of inheritance or succession are not requisite to transfer a fee in real property.

History: En. Sec. 1476, Civ. C. 1895; re-en. Sec. 4608, Rev. C. 1907; re-en. Sec. 6855, R.C.M. 1921; Cal. Civ. C. Sec. 1072; Field Civ. C. Sec. 478; re-en. Sec. 6855, R.C.M. 1935; R.C.M. 1947, 67-1521.

70-20-105. Joint tenancy — how created. (1) A joint tenancy as to any interest in real property may be established by the owner thereof by designating in the instrument of conveyance or transfer the names of such joint tenants, including his own, without the necessity of any transfer or conveyance to or through a third person.

(2) All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy.

History: En. Sec. 1, Ch. 208, L. 1963; amd. Sec. 1, Ch. 9, L. 1971; R.C.M. 1947, 67-1602.1.

Cross-References

Ownership by several persons — types, 70-1-306.

70-20-106. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1502, Civ. C. 1895; re-en. Sec. 4614, Rev. C. 1907; re-en. Sec. 6861, R.C.M. 1921; Cal. Civ. C. Sec. 1093; Based on Field Civ. C. Sec. 486; re-en. Sec. 6861, R.C.M. 1935; amd. Sec. 33, Ch. 535, L. 1975; R.C.M. 1947, 67-1603.

70-20-107. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1503, Civ. C. 1895; re-en. Sec. 4615, Rev. C. 1907; re-en. Sec. 6862, R.C.M. 1921; Cal. Civ. C. Sec. 1094; re-en. Sec. 6862, R.C.M. 1935; R.C.M. 1947, 67-1604; amd. Sec. 8, Ch. 115, L. 1979.

70-20-108. Attorney-in-fact — how must execute for principal. When an attorney-in-fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it and his own name as attorney-in-fact.

History: En. Sec. 1504, Civ. C. 1895; re-en. Sec. 4616, Rev. C. 1907; re-en. Sec. 6863, R.C.M. 1921; Cal. Civ. C. Sec. 1095; re-en. Sec. 6863, R.C.M. 1935; R.C.M. 1947, 67-1605.

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

70-20-109. Change of owner's name after acquisition — later conveyance to include former name. Any person in whom the title of real estate is vested, who shall afterwards from any cause have his or her name changed, shall, in any conveyances of said real estate so held, set forth the name in which he or she derived title to said real estate, and a failure to comply with the provisions of this section shall subject any such person to a penalty of $50, to be collected by the county attorney of the county in which the real estate is situated and by him paid into the treasury of said county for the benefit of the common schools thereof.

History: En. Sec. 1505, Civ. C. 1895; re-en. Sec. 4617, Rev. C. 1907; re-en. Sec. 6864, R.C.M. 1921; Cal. Civ. C. Sec. 1096; re-en. Sec. 6864, R.C.M. 1935; R.C.M. 1947, 67-1606.

70-20-110. Redelivery or cancellation of grant — no retransfer. Redelivering a grant of real property to the grantor or canceling it does not operate to retransfer the title.

History: **En. Sec. 1456, Civ. C. 1895; re-en. Sec. 4600, Rev. C. 1907; re-en. Sec. 6847, R.C.M. 1921; Cal. Civ. C. Sec. 1058; Field Civ. C. Sec. 469; re-en. Sec. 6847, R.C.M. 1935; R.C.M. 1947, 67-1513.**

70-20-111 and 70-20-112 reserved.

70-20-113. Definitions — notice of presence of smoke detectors upon sale of dwelling. (1) In this section, the following definitions apply:

(a) "Dwelling" means a building or portion of a building, including a mobile home or housetrailer, that contains not more than two dwelling units.

(b) "Dwelling unit" means a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for not more than one family.

(c) "Smoke detector" means a device that detects visible or invisible particles or combustion.

(2) Upon the sale or transfer of ownership of a dwelling not otherwise required to have a smoke detector, the seller shall provide a written notice to the buyer in a buy-sell agreement or at the time of the sale to the buyer that the dwelling is equipped or is not equipped with smoke detectors or other fire detection devices.

(3) Neither the seller nor his agent is liable in a civil action for failure to comply with, or negligence in complying with, the requirements of this section. Evidence of failure to comply with, or negligence in complying with, this section is not admissible in a civil action.

History: **En. Sec. 1, Ch. 30, L. 1991.**

70-20-114 reserved.

70-20-115. Notice to purchaser of property under contract for deed. (1) As used in this section, "purchaser under contract for deed" means:

(a) any person who:

(i) has entered into a contract with the record owner of real property in which it was agreed that the record owner will deliver the deed to the property to the purchaser when certain conditions have been met, such as completion of payments by the purchaser; and

(ii) has recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21;

(b) any assignee or successor of a person included under subsection (1)(a), if such assignee or successor has also recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21.

(2) When it is required by statute that legal notice be given to the owner of real property, the same notice must be given to a purchaser of that property under a contract for deed.

History: **En. Sec. 1, Ch. 526, L. 1983.**

Cross-References

Resolution of intent by first-class city — notice, 7-2-4312.

Division of assessment, 7-3-1309.

Department of finance, 7-3-4431.

Vacating or changing of street name, 7-3-4448.

Notice of intention to levy tax, 7-13-2304.

Power to order certain improvements without creation of SID, 7-14-4109.

Notice of hearing on urban renewal plan, 7-15-4215.

Notice of hearing on petition to create mosquito district, 7-22-2406.

Hearing on petition for dissolution of mosquito control district — notice, 7-22-2446.

Notice of tax classification and appraisal to owners — appeals, 15-7-102.

Reclassification of land by Department, 15-7-208.

County Tax Appeal Board — meetings and compensation, 15-15-101.

Independent appraisal option — notice of assessment — opportunity for conference — appeal, 15-23-102.

Notice defined, 25-3-101.

Service of order to repair hazardous condition or demolish structure, 50-62-103.

Conversion of facilities on public property — notice to landowners, 69-4-353.

Contents of complaint, 70-30-203.

Hearing on preliminary plat, 76-3-605.

Removal of infected nursery stock — assessment of costs, 80-7-110.

Notice of condemnation — filing of plat, 82-2-224.

Permit application, 82-4-222.

Reclamation by Board or Department, 82-4-239.

Notice of drilling operations, 82-10-503.

Part 2

Construction of Grant

Part Cross-References

Interpretation of contracts, Title 28, ch. 3.

70-20-201. Rules for construing description. The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

(1) Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount.

(3) Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces and that of lines paramount to both.

(4) When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or thread of the stream is held under another title.

(5) When a navigable lake, where there is no tide, is the boundary, the rights of the grantor to low watermark are included in the conveyance.

(6) When the description refers to a map and that reference is inconsistent with other particulars, it controls them if it appear that the parties acted with reference to the map; otherwise, the map is subordinate to other definite and ascertained particulars.

History: En. Sec. 3413, C. Civ. Proc. 1895; re-en. Sec. 8039, Rev. C. 1907; re-en. Sec. 10683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2077; re-en. Sec. 10683, R.C.M. 1935; R.C.M. 1947, 93-2201-4.

70-20-202. Extrinsic evidence not to be considered in construction of deed — exceptions. (1) When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) where a mistake or imperfection of the writing is put in issue by the pleadings;

(b) where the validity of the agreement is the fact in dispute.

(2) But this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in 1-4-102, or to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement" includes deeds and wills as well as contracts between parties.

History: **En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13.**

Cross-References

When extrinsic evidence concerning written agreement may be considered, 28-2-905.

Part 3
Effect of Transfer

70-20-301. Fee simple presumed to pass. A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

History: **En. Sec. 1511, Civ. C. 1895; re-en. Sec. 4619, Rev. C. 1907; re-en. Sec. 6866, R.C.M. 1921; Cal. Civ. C. Sec. 1105; re-en. Sec. 6866, R.C.M. 1935; R.C.M. 1947, 67-1608.**

70-20-302. After-acquired title to pass by operation of law. Where a person purports by proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee or his successors.

History: **En. Sec. 32, p. 401, Cod. Stat. 1871; re-en. Sec. 209, 5th Div. Rev. Stat. 1879; re-en. Sec. 267, 5th Div. Comp. Stat. 1887; amd. Sec. 1512, Civ. C. 1895; re-en. Sec. 4620, Rev. C. 1907; re-en. Sec. 6867, R.C.M. 1921; Cal. Civ. C. Sec. 1106; re-en. Sec. 6867, R.C.M. 1935; R.C.M. 1947, 67-1609.**

70-20-303. Grant conclusive — exception for good faith purchaser. Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

History: **En. Sec. 1513, Civ. C. 1895; re-en. Sec. 4621, Rev. C. 1907; re-en. Sec. 6868, R.C.M. 1921; Cal. Civ. C. Sec. 1107; Field Civ. C. Sec. 490; re-en. Sec. 6868, R.C.M. 1935; R.C.M. 1947, 67-1610.**

70-20-304. Implied covenants — free from encumbrance. (1) From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed, the following covenants and none other on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns are implied unless restrained by express terms contained in such conveyance:

(a) that previous to the time of the execution of such conveyance the grantor has not conveyed the same estate or any right, title, or interest therein to any person other than the grantee;

(b) that such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor or any person claiming under him.

(2) Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

History: En. Sec. 50, p. 487, Bannack Stat.; re-en. Sec. 50, p. 404, Cod. Stat. 1871; re-en. Sec. 227, 5th Div. Rev. Stat. 1879; re-en. Sec. 285, 5th Div. Comp. Stat. 1887; amd. Sec. 1519, Civ. C. 1895; re-en. Sec. 4627, Rev. C. 1907; re-en. Sec. 6874, R.C.M. 1921; Cal. Civ. C. Sec. 1113; re-en. Sec. 6874, R.C.M. 1935; R.C.M. 1947, 67-1616.

Cross-References

Breach of covenants in grants of estates in real property, 27-1-316.

Form of covenants, 30-11-110.

70-20-305. Encumbrance defined. The term "encumbrances" includes taxes, assessments, and all liens upon real property.

History: En. Sec. 1520, Civ. C. 1895; re-en. Sec. 4628, Rev. C. 1907; re-en. Sec. 6875, R.C.M. 1921; Cal. Civ. C. Sec. 1114; re-en. Sec. 6875, R.C.M. 1935; R.C.M. 1947, 67-1617.

70-20-306. Responsibility of heirs of covenantor — certain warranties abolished. Lineal and collateral warrants, with all their incidents, are abolished, but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property are answerable upon such covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law.

History: En. Sec. 49, p. 487, Bannack Stat.; re-en. Sec. 49, p. 403, Cod. Stat. 1871; re-en. Sec. 226, 5th Div. Rev. Stat. 1879; re-en. Sec. 284, 5th Div. Comp. Stat. 1887; amd. Sec. 1521, Civ. C. 1895; re-en. Sec. 4629, Rev. C. 1907; re-en. Sec. 6876, R.C.M. 1921; Cal. Civ. C. Sec. 1115; re-en. Sec. 6876, R.C.M. 1935; R.C.M. 1947, 67-1618.

70-20-307. Transfer of land bounded by highway — what passes. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof unless a different intent appears from the grant.

History: En. Sec. 1518, Civ. C. 1895; re-en. Sec. 4626, Rev. C. 1907; re-en. Sec. 6873, R.C.M. 1921; Cal. Civ. C. Sec. 1112; Based on Field Civ. C. Sec. 492; re-en. Sec. 6873, R.C.M. 1935; R.C.M. 1947, 67-1615.

70-20-308. Easements to pass with property. A transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred for the benefit thereof at the time when the transfer was agreed upon or completed.

History: En. Sec. 1510, Civ. C. 1895; re-en. Sec. 4618, Rev. C. 1907; re-en. Sec. 6865, R.C.M. 1921; Cal. Civ. C. Sec. 1104; Field Civ. C. Sec. 488; re-en. Sec. 6865, R.C.M. 1935; R.C.M. 1947, 67-1607.

70-20-309. Transfer of owner ousted of possession — effect. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

History: En. Sec. 1443, Civ. C. 1895; re-en. Sec. 4593, Rev. C. 1907; re-en. Sec. 6840, R.C.M. 1921; Cal. Civ. C. Sec. 1047; re-en. Sec. 6840, R.C.M. 1935; R.C.M. 1947, 67-1506.

70-20-310. Conveyance in joint tenancy — right of survivorship. In all conveyances of real property made in joint tenancy where the right of survivorship is contained in the grant of such conveyance, the right of survivorship exists by virtue of such grant.

History: En. Sec. 1, Ch. 118, L. 1943; R.C.M. 1947, 67-310; amd. Sec. 9, Ch. 115, L. 1979.

70-20-311. Grant on condition subsequent. When a grant is made upon condition subsequent and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors by grant duly acknowledged for record.

History: En. Sec. 1515, Civ. C. 1895; re-en. Sec. 4623, Rev. C. 1907; re-en. Sec. 6870, R.C.M. 1921; Cal. Civ. C. Sec. 1109; re-en. Sec. 6870, R.C.M. 1935; R.C.M. 1947, 67-1612.

Cross-References

Condition subsequent defined, 28-1-405.

70-20-312. Grant on condition precedent. An instrument purporting to be a grant of real property to take effect upon condition precedent passes the estate upon the performance of the condition.

History: En. Sec. 1516, Civ. C. 1895; re-en. Sec. 4624, Rev. C. 1907; re-en. Sec. 6871, R.C.M. 1921; Cal. Civ. C. Sec. 1110; re-en. Sec. 6871, R.C.M. 1935; R.C.M. 1947, 67-1613.

Cross-References

Condition precedent defined, 28-1-403.

70-20-313. Grant by owner for life or years. A grant made by an owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate but passes to the grantee all the estate which the grantor could lawfully transfer.

History: En. Sec. 1514, Civ. C. 1895; re-en. Sec. 4622, Rev. C. 1907; re-en. Sec. 6869, R.C.M. 1921; Cal. Civ. C. Sec. 1108; Field Civ. C. Sec. 491; re-en. Sec. 6869, R.C.M. 1935; R.C.M. 1947, 67-1611.

70-20-314. Grant of property occupied by tenant. When real property is occupied by a tenant, a grant of any estate therein by his landlord is valid without an attornment of the tenant to the grantee; but the payment of rent to such grantor by his tenant before notice of the grant is binding upon the grantee, and the tenant is not liable to the grantee for any breach of the condition of the lease until he has had notice of the grant.

History: En. Sec. 1517, Civ. C. 1895; re-en. Sec. 4625, Rev. C. 1907; re-en. Sec. 6872, R.C.M. 1921; Cal. Civ. C. Sec. 1111; Field Civ. C. Sec. 493; re-en. Sec. 6872, R.C.M. 1935; R.C.M. 1947, 67-1614.

70-20-315. Validation of unacknowledged deeds. All deeds to real property executed prior to January 1, 1983, in this state or any state or territory of the United States, provided no action is pending on October 1, 1983, to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state and be conclusive evidence of the title to the lands therein described against the grantors, their heirs, and assigns.

History: En. Sec. 1, Ch. 82, L. 1973; R.C.M. 1947, 39-139; amd. Sec. 1, Ch. 296, L. 1983.

70-20-316. Deeds made prior to 1900 — presumption grantor had no wife. When a deed to real property has been made, executed, and acknowledged prior to the year 1900 by a grantor without recital in the body of the deed or acknowledgment as to whether or not the grantor is married or single and the wife of such grantor, if any, not joining in the conveyance or otherwise releasing or conveying her dower, the presumption shall be that the person conveying such land had no wife living at the date of such conveyance and that such land was conveyed free of all right of dower, inchoate or vested.

History: En. Sec. 1, Ch. 183, L. 1945; R.C.M. 1947, 39-131.

Part 4

Fraudulent Conveyances

Part Cross-References

Condition concurrent defined, 28-1-404.

Condition subsequent defined, 28-1-405.

What conditions must be performed before requiring performance by another, 28-1-406.

70-20-401. Instrument made with intent to defraud — void. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof or encumbrancers thereon is void as against every purchaser or encumbrancer for value of the same property or the rents or profits thereof.

History: En. Sec. 1, p. 492, Bannack Stat.; re-en. Sec. 1, p. 392, Cod. Stat. 1871; re-en. Sec. 155, 5th Div. Rev. Stat. 1879; re-en. Sec. 212, 5th Div. Comp. Stat. 1887; amd. Sec. 1650, Civ. C. 1895; re-en. Sec. 4688, Rev. C. 1907; re-en. Sec. 6939, R.C.M. 1921; Cal. Civ. C. Sec. 1227; Field Civ. C. Sec. 535; re-en. Sec. 6939, R.C.M. 1935; R.C.M. 1947, 29-201.

70-20-402. Instrument not void as to purchaser with notice — exception. No instrument is to be avoided under 70-20-401 in favor of a subsequent purchaser or encumbrancer having notice thereof at the time his purchase was made or his lien acquired unless the person in whose favor the instrument was made was a privy to the fraud intended.

History: En. Sec. 2, p. 492, Bannack Stat.; re-en. Sec. 2, p. 392, Cod. Stat. 1871; re-en. Sec. 156, 5th Div. Rev. Stat. 1879; re-en. Sec. 213, 5th Div. Comp. Stat. 1887; amd. Sec. 1651, Civ. C. 1895; re-en. Sec. 4689, Rev. C. 1907; re-en. Sec. 6940, R.C.M. 1921; Cal. Civ. C. Sec. 1228; Field Civ. C. Sec. 536; re-en. Sec. 6940, R.C.M. 1935; R.C.M. 1947, 29-202.

70-20-403. Grant by person with power to revoke — power executed. (1) Where a power to revoke or modify an instrument affecting the title to or enjoyment of an estate in real property is reserved to the grantor or given to any other person, a subsequent grant of or charge upon the estate by the person having the power of revocation in favor of a purchaser or encumbrancer for value operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or encumbrancer.

(2) Where a person having a power of revocation within the provisions of subsection (1) is not entitled to execute it until after the time at which he makes such a grant or charge as described in that subsection, the power is deemed to be executed as soon as he is entitled to execute it.

History: (1)En. Sec. 3, p. 492, Bannack Stat.; re-en. Sec. 3, p. 392, Cod. Stat. 1871; re-en. Sec. 157, 5th Div. Rev. Stat. 1879; re-en. Sec. 214, 5th Div. Comp. Stat. 1887; amd. Sec. 1652, Civ. C. 1895; re-en. Sec. 4690, Rev. C. 1907; re-en. Sec. 6941, R.C.M. 1921; Cal. Civ. C. Sec. 1229; Field Civ. C. Sec. 537; re-en. Sec. 6941, R.C.M. 1935; Sec. 29-203, R.C.M. 1947; (2)En. Sec. 1653, Civ. C. 1895; re-en. Sec. 4691, Rev. C. 1907; re-en. Sec. 6942, R.C.M.

1921; Cal. Civ. C. Sec. 1230; Field Civ. C. Sec. 538; re-en. Sec. 6942, R.C.M. 1935; Sec. 29-204, R.C.M. 1947; R.C.M. 1947, 29-203, 29-204.

70-20-404. Purchaser in good faith not affected. The rights of a purchaser or encumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this part.

History: En. Sec. 1654, Civ. C. 1895; re-en. Sec. 4692, Rev. C. 1907; re-en. Sec. 6943, R.C.M. 1921; Field Civ. C. Sec. 539; re-en. Sec. 6943, R.C.M. 1935; R.C.M. 1947, 29-205.

70-20-405. Other provisions on unlawful transfers — where found. Other provisions concerning unlawful transfers are contained in Title 31, chapter 2, part 3, concerning the special relations of debtor and creditor.

History: En. Sec. 1655, Civ. C. 1895; re-en. Sec. 4693, Rev. C. 1907; re-en. Sec. 6944, R.C.M. 1921; Cal. Civ. C. Sec. 1231; Field Civ. C. Sec. 541; re-en. Sec. 6944, R.C.M. 1935; R.C.M. 1947, 29-206; amd. Sec. 10, Ch. 115, L. 1979.

CHAPTER 21

RECORDING TRANSFERS AND OTHER TRANSACTIONS RELATING TO REAL PROPERTY

Part 1 — General Provisions

70-21-101. Instrument defined — abstract.
70-21-102. Unrecorded instruments valid between parties.
70-21-103. Unrecorded deeds — to whom belong.
70-21-104. Removal of records prohibited — exceptions.

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70-21-202. Certain transfers in trust — mortgages — when to be recorded.
70-21-203. Acknowledgment of instruments required — exceptions.
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70-21-205. Acknowledgment unnecessary for recording judgments.
70-21-206. Recording of return of sale under court decree.
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70-21-211. Record books to be separate.
70-21-212. Other duties of recorder — where found.
70-21-213. Taxes paid before recording division or merger of real property.

Part 3 — Effect of Recording

70-21-301. Conveyance defined.
70-21-302. Recording as constructive notice — effect of recording copy in other county.
70-21-303. After-acquired interest — effect on notice.
70-21-304. Conveyance void as against other conveyance recorded first.
70-21-305. Abstract of conveyance — effect of recording.
70-21-306. Recording judgments to impart notice.
70-21-307. Effect of conveyance to grantee as trustee when no trust conditions provided.
70-21-308. Power of attorney contained in recorded instrument — how revoked.
70-21-309. Validation of conveyances recorded after defective execution — notice imparted.
70-21-310. Validation of recorded instruments omitting address of grantee — notice imparted.

Part 1
General Provisions

70-21-101. Instrument defined — abstract. For the purposes of Title 1, chapter 5; part 2 of this chapter; and 70-21-310, the word instrument includes an abstract of an instrument that must be executed and acknowledged or proved by all parties executing the abstracted document and contains:

(1) the names and addresses of the parties to the instrument;
(2) a description of the real property affected;
(3) a statement that this is an abstract of another document;
(4) a short statement of the effect of the document abstracted;
(5) the name and address of the person who will provide a full and complete copy of the document abstracted, without cost, upon request of any person.

History: En. Sec. 2, Ch. 218, L. 1971; R.C.M. 1947, 73-101.1; amd. Sec. 20, Ch. 192, L. 1993.

70-21-102. Unrecorded instruments valid between parties. An unrecorded instrument is valid as between the parties and those who have notice thereof.

History: En. Sec. 1644, Civ. C. 1895; re-en. Sec. 4687, Rev. C. 1907; re-en. Sec. 6938, R.C.M. 1921; Cal. Civ. C. Sec. 1217; re-en. Sec. 6938, R.C.M. 1935; R.C.M. 1947, 73-205.

70-21-103. Unrecorded deeds — to whom belong. Instruments essential to the title of real property and which are not kept in a public office as a record pursuant to law belong to the person in whom, for the time being, such title may be vested and pass with the title.

History: En. Sec. 1373, Civ. C. 1895; re-en. Sec. 4568, Rev. C. 1907; re-en. Sec. 6815, R.C.M. 1921; Cal. Civ. C. Sec. 994; Field Civ. C. Sec. 438; re-en. Sec. 6815, R.C.M. 1935; R.C.M. 1947, 67-1113.

70-21-104. Removal of records prohibited — exceptions. The record of a conveyance of real property or any other record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

History: En. Sec. 3240, C. Civ. Proc. 1895; re-en. Sec. 7953, Rev. C. 1907; re-en. Sec. 10597, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1950; re-en. Sec. 10597, R.C.M. 1935; R.C.M. 1947, 93-1101-20.

Part 2
Recording — Procedure

Part Cross-References
Documents subject to recording, 7-4-2613.
Procedure to record documents, 7-4-2617.

70-21-201. What may be recorded — recording copy in another county. (1) Any instrument or judgment affecting the title to or possession of real property may be recorded under this part.

(2) When any instrument or judgment affecting the title to or possession of real property situated in more than one county in this state has been recorded in either of such counties, a copy thereof, certified to by the county clerk of the

county in which it has been recorded, may be recorded in any other county in this state wherein any portion of the real property affected by such instrument or judgment is situated, and such records will have the same effect as if the original instrument or judgment had been so recorded.

History: **En. Sec. 1570, Civ. C. 1895; re-en. Sec. 4643, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1919; re-en. Sec. 6890, R.C.M. 1921; Cal. Civ. C. Sec. 1158; Field Civ. C. Sec. 508; re-en. Sec. 6890, R.C.M. 1935; R.C.M. 1947, 73-101.**

Cross-References

Documents subject to recording, 7-4-2613.

70-21-202. Certain transfers in trust — mortgages — when to be recorded. Transfers of property in trust for the benefit of creditors and transfers or liens on property by way of mortgage or abstract of such document are required to be recorded in the cases specified in Title 31, chapter 2, on the special relation of debtor and creditor and Title 71 on mortgages, respectively.

History: **En. Sec. 1575, Civ. C. 1895; re-en. Sec. 4648, Rev. C. 1907; re-en. Sec. 6895, R.C.M. 1921; Cal. Civ. C. Sec. 1164; Field Civ. C. Sec. 511; re-en. Sec. 6895, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1971; R.C.M. 1947, 73-107.**

Cross-References

Recording of mortgages and assignments, 71-1-207.

70-21-203. Acknowledgment of instruments required — exceptions. Before an instrument can be recorded, unless it belongs to the class provided for in either 70-21-205 or 70-21-207, its execution must be:

(1) acknowledged by the person executing it or, if executed by a corporation, by its president, vice president, secretary or assistant secretary, or other person duly authorized by resolution by the corporation executing the instrument on behalf of the corporation; or

(2) proved by:

(a) a subscribing witness; or

(b) as provided in 1-5-302 and 1-5-303; and

(c) the acknowledgment or proof certified in the manner prescribed by Title 1, chapter 5.

History: **En. Sec. 1573, Civ. C. 1895; re-en. Sec. 4646, Rev. C. 1907; re-en. Sec. 6893, R.C.M. 1921; Cal. Civ. C. Sec. 1161; Based on Field Civ. C. Sec. 509; amd. Sec. 1, Ch. 16, L. 1931; re-en. Sec. 6893, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1937; R.C.M. 1947, 73-105; amd. Sec. 21, Ch. 192, L. 1993.**

70-21-204. Proof of handwriting acceptable for recording — when. An instrument proved and certified pursuant to 1-5-302 and 1-5-303 may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

History: **En. Sec. 1574, Civ. C. 1895; re-en. Sec. 4647, Rev. C. 1907; re-en. Sec. 6894, R.C.M. 1921; Cal. Civ. C. Sec. 1162; Field Civ. C. Sec. 510; re-en. Sec. 6894, R.C.M. 1935; R.C.M. 1947, 73-106.**

70-21-205. Acknowledgment unnecessary for recording judgments. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

History: **En. Sec. 1571, Civ. C. 1895; re-en. Sec. 4644, Rev. C. 1907; re-en. Sec. 6891, R.C.M. 1921; Cal. Civ. C. Sec. 1159; re-en. Sec. 6891, R.C.M. 1935; R.C.M. 1947, 73-102.**

70-21-206. Recording of return of sale under court decree. Where real estate is sold under a decree of court, return of such sale shall be made and filed in the office of the clerk of court. The clerk shall record the return so made the same as if it were to an execution wherein a levy upon real estate had been made, provided that where the return contains a true copy of the decree of court under which such sale was made, the clerk shall record all of the return except such copy of the decree and, in lieu of recording such copy, shall insert in the record the following:

"The original judgment and decree, the true copy which is set forth in this return, is recorded in judgment book ...., at pages .... to ...., inclusive, thereof."

History: En. Sec. 1, Ch. 42, L. 1927; re-en. Sec. 6891.1, R.C.M. 1935; R.C.M. 1947, 73-103.

70-21-207. Letters patent and other federal and state documents — recording without acknowledgment. Letters patent from the United States or from the state of Montana or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States or the state of Montana which evidence title to land or affect the title thereof, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost or are beyond the control of any party deraigning title therefrom or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original for title or for evidence until the original letters patent be recorded.

History: En. Sec. 1572, Civ. C. 1895; re-en. Sec. 4645, Rev. C. 1907; re-en. Sec. 6892, R.C.M. 1921; Cal. Civ. C. Sec. 1160; re-en. Sec. 6892, R.C.M. 1935; amd. Sec. 1, Ch. 148, L. 1957; R.C.M. 1947, 73-104.

70-21-208. In what county to be recorded. Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated.

History: En. Sec. 1590, Civ. C. 1895; re-en. Sec. 4650, Rev. C. 1907; re-en. Sec. 6898, R.C.M. 1921; Cal. Civ. C. Sec. 1169; Based on Field Civ. C. Sec. 512; re-en. Sec. 6898, R.C.M. 1935; R.C.M. 1947, 73-110.

70-21-209. When instrument considered recorded. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the county clerk's office with the proper officer for record.

History: En. Sec. 1591, Civ. C. 1895; re-en. Sec. 4651, Rev. C. 1907; re-en. Sec. 6899, R.C.M. 1921; Cal. Civ. C. Sec. 1170; Based on Field Civ. C. Sec. 513; re-en. Sec. 6899, R.C.M. 1935; R.C.M. 1947, 73-111.

70-21-210. Clerk to endorse fee. The county clerk must in all cases endorse the amount of his fee for recording on the instrument recorded.

History: En. Sec. 1576, Civ. C. 1895; re-en. Sec. 4649, Rev. C. 1907; re-en. Sec. 6896, R.C.M. 1921; Cal. Civ. C. Sec. 1165; re-en. Sec. 6896, R.C.M. 1935; R.C.M. 1947, 73-108.

70-21-211. Record books to be separate. Grants absolute in terms are to be recorded in one set of books and mortgages and securities in the nature of mortgages in another.

History: En. Sec. 1592, Civ. C. 1895; re-en. Sec. 4652, Rev. C. 1907; re-en. Sec. 6900, R.C.M. 1921; Cal. Civ. C. Sec. 1171; re-en. Sec. 6900, R.C.M. 1935; R.C.M. 1947, 73-112.

70-21-212. Other duties of recorder — where found. The duties of county clerks in respect to recording instruments are prescribed by Title 7, chapter 4, part 26.

History: En. Sec. 1593, Civ. C. 1895; re-en. Sec. 4653, Rev. C. 1907; re-en. Sec. 6901, R.C.M. 1921; Cal. Civ. C. Sec. 1172; Based on Field Civ. C. Sec. 514; re-en. Sec. 6901, R.C.M. 1935; R.C.M. 1947, 73-113.

70-21-213. Taxes paid before recording division or merger of real property. An instrument or deed evidencing either a division of real property or a merger of real property may not be accepted for recordation unless accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid.

History: En. Sec. 4, Ch. 366, L. 1993.

Part 3

Effect of Recording

70-21-301. Conveyance defined. The term “conveyance”, as used in 70-21-302 through 70-21-304, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered or by which the title to real property may be affected, except wills.

History: En. Sec. 1642, Civ. C. 1895; re-en. Sec. 4685, Rev. C. 1907; re-en. Sec. 6936, R.C.M. 1921; Cal. Civ. C. Sec. 1215; Based on Field Civ. C. Sec. 531; re-en. Sec. 6936, R.C.M. 1935; R.C.M. 1947, 73-203.

70-21-302. Recording as constructive notice — effect of recording copy in other county. (1) Every conveyance of real property acknowledged or proved and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

(2) A certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance.

History: En. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R.C.M. 1921; Cal. Civ. C. Secs. 1213, 1218; re-en. Sec. 6934, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1967; R.C.M. 1947, 73-201(part).

70-21-303. After-acquired interest — effect on notice. Further, every conveyance and/or encumbrance of real property acknowledged or proved and certified and recorded as prescribed by law and which is executed by one who thereafter acquires an interest in the real property by a conveyance which said conveyance is constructive notice as aforesaid is, from the time such latter conveyance is filed with the county clerk for record, constructive notice of the contents of such earlier conveyance and/or encumbrance to subsequent takers, purchasers, mortgagees, or other encumbrancers or transferees.

History: En. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R.C.M. 1921; Cal. Civ. C. Secs. 1213, 1218; re-en. Sec. 6934, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1967; R.C.M. 1947, 73-201(part).

70-21-304. Conveyance void as against other conveyance recorded first. Every conveyance of real property, other than a lease for a term not exceeding 1 year, is void against any subsequent purchaser or encumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property or any part thereof in good faith and for a valuable consideration whose conveyance is first duly recorded.

History: En. Sec. 260, 5th Div. Comp. Stat. 1887; re-en. Sec. 1641, Civ. C. 1895; re-en. Sec. 4684, Rev. C. 1907; re-en. Sec. 6935, R.C.M. 1921; Cal. Civ. C. Sec. 1214; Based on Field Civ. C. Sec. 530; re-en. Sec. 6935, R.C.M. 1935; R.C.M. 1947, 73-202.

70-21-305. Abstract of conveyance — effect of recording. An abstract of a conveyance or encumbrance of real property, which abstract is acknowledged or proved and certified and recorded as prescribed by law, shall have the same effect for all purposes of this part as if the conveyance or encumbrance of real property had been acknowledged or proved and certified and recorded as prescribed by law.

History: En. Sec. 3, Ch. 218, L. 1971; R.C.M. 1947, 73-201.1.

70-21-306. Recording judgments to impart notice. Every certified copy of a judgment of partition or any other judgment, filed and recorded as provided in 7-4-2613, from the time of filing the same for record imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lienholders purchase and take with like notice and effect as if such property or judgment was a duly recorded deed, grant, or transfer.

History: En. Sec. 4415, Pol. C. 1895; re-en. Sec. 3036, Rev. C. 1907; re-en. Sec. 4802, R.C.M. 1921; Cal. Pol. C. Sec. 4239; re-en. Sec. 4802, R.C.M. 1935; R.C.M. 1947, 16-2908.

70-21-307. Effect of conveyance to grantee as trustee when no trust conditions provided. Any conveyance of real property hereafter placed of record in any office of any county clerk and recorder in which the name of the grantee is followed by the word "trustee", "as trustee", or some similar fiduciary term and in which no terms and conditions of such purported trust or any limitation on the power of the grantee to convey shall be set forth so that any person dealing with such real property could learn therefrom what, if any, limitation exists upon the authority of the grantee with regard to the reconveyance or encumbrance of such property shall be considered as though such property had been conveyed to such grantee without any limitation upon his authority to reconvey or encumber as fully as though the word "trustee", "as trustee", or any equivalent fiduciary expression had not been used in connection with his name, and the use of the word "trustee" or "as trustee" or any equivalent fiduciary expression purporting a trust contained in such conveyance shall have no force or effect in charging any purchaser or encumbrancer thereof with notice of any limitation of power on the part of the person so named as trustee to deal with such lands as his own.

History: En. Sec. 1, Ch. 64, L. 1943; R.C.M. 1947, 73-206.

70-21-308. Power of attorney contained in recorded instrument — how revoked. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also acknowledged or proved, certified, and recorded in the same office in which the instrument containing the power was recorded.

History: En. Sec. 1643, Civ. C. 1895; re-en. Sec. 4686, Rev. C. 1907; re-en. Sec. 6937, R.C.M. 1921; Cal. Civ. C. Sec. 1216; Based on Field Civ. C. Sec. 532; re-en. Sec. 6937, R.C.M. 1935; R.C.M. 1947, 73-204.

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

70-21-309. Validation of conveyances recorded after defective execution — notice imparted. (1) Any instrument affecting real property, provided no action is pending as of October 1, 1991, to set such instrument aside, which was, previous to January 1, 1991, recorded in the office of the county clerk and recorder shall be deemed to impart after that date notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any technical defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to January 1, 1991.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 147, L. 1973; R.C.M. 1947, 73-213; amd. Sec. 1, Ch. 476, L. 1981; amd. Sec. 2, Ch. 296, L. 1983; amd. Sec. 1, Ch. 284, L. 1991.

70-21-310. Validation of recorded instruments omitting address of grantee — notice imparted. (1) Any deed, mortgage, or assignment of mortgage which was, previous to July 1, 1931, copied into the proper book kept in the office of the county clerk and recorder shall be deemed to impart, after July 1, 1931, notice of its contents to subsequent purchasers and encumbrancers notwithstanding the omission therefrom of the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be; and all such instruments recorded before July 1, 1931, which do not contain the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be, shall be valid and shall have the same force and effect as though the post-office address of such grantee, mortgagee, or assignee of the mortgagee were contained therein; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to July 1, 1931.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as certified copies of instruments duly recorded containing the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be.

History: En. Sec. 1, Ch. 37, L. 1931; re-en. Sec. 6933.1, R.C.M. 1935; R.C.M. 1947, 39-132.

CHAPTER 22

CORNER RECORDATION ACT SURVEYS AND COORDINATES

Part 1 — Corner Recordation Act

70-22-101. Short title.
70-22-102. Purpose.
70-22-103. Definitions.
70-22-104. Filing of corner record required.

70-22-105. Filing permitted as to any corner or accessory.
70-22-106. Filing of records on corners established before effective date.
70-22-107. Form and contents of record — board to prescribe.
70-22-108. Corner records to be certified.
70-22-109. Duties of county clerk.
70-22-110. Surveyor to rehabilitate monument.

Part 2 — Montana Coordinate System

70-22-201. Coordinate systems adopted — designation — division of state into zones.
70-22-202. Designation of system by zone.
70-22-203. Use of x- and y-coordinates.
70-22-204. Description of location.
70-22-205. Technical description of zones.
70-22-206. Conformity to standards required for use of coordinates in recorded instrument.
70-22-207. Use of term Montana coordinate system limited.
70-22-208. Public land survey description to prevail.
70-22-209. Purchaser or mortgagee not required to rely on description using systems.
70-22-210. Limit on use of Montana coordinate system NAD 27.

Part 1
Corner Recordation Act

70-22-101. Short title. This part may be cited as the "Corner Recordation Act of Montana".

History: En. Sec. 1, Ch. 202, L. 1963; R.C.M. 1947, 67-2001.

70-22-102. Purpose. It is the purpose of this part to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners thereby providing for property security and a coherent system of property location and identification of ownerships and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they are established and located.

History: En. Sec. 2, Ch. 202, L. 1963; R.C.M. 1947, 67-2002.

70-22-103. Definitions. Except where the context indicates a different meaning, terms used in this part shall be defined as follows:

(1) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(2) The "board" is the board of professional engineers and professional land surveyors, provided for in 2-15-1873.

(3) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

(4) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(5) A "property controlling corner" for a property is a public land survey corner or any property corner which does not lie on a property line of the

property in question but which controls the location of one or more of the property corners of the property in question.

(6) A "property corner" is a geographic point on the surface of the earth and is on, a part of, and controls a property line.

(7) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(8) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and which serves to witness the corner.

(9) A "registered surveyor" is a surveyor who is registered to practice land surveying under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under Title 37, chapter 67, to practice land surveying.

History: En. Sec. 3, Ch. 202, L. 1963; amd. Sec. 320, Ch. 350, L. 1974; R.C.M. 1947, 67-2003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 73, Ch. 83, L. 1989.

70-22-104. Filing of corner record required. A surveyor shall complete, sign, stamp with his seal, and file with the county clerk and recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by such surveyor and within 90 days thereafter unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this part.

History: En. Sec. 4, Ch. 202, L. 1963; R.C.M. 1947, 67-2004.

70-22-105. Filing permitted as to any corner or accessory. A surveyor may file such corner record as to any property corner, property controlling corner, reference monument, or accessory to a corner.

History: En. Sec. 5, Ch. 202, L. 1963; R.C.M. 1947, 67-2005.

70-22-106. Filing of records on corners established before effective date. Corner records may be filed concerning corners established, reestablished, or restored before July 1, 1963.

History: En. Sec. 10, Ch. 202, L. 1963; R.C.M. 1947, 67-2010.

70-22-107. Form and contents of record — board to prescribe. The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record, and the board shall prescribe the form in which such corner record shall be presented and filed.

History: En. Sec. 6, Ch. 202, L. 1963; R.C.M. 1947, 67-2006.

70-22-108. Corner records to be certified. No corner record shall be filed unless the same is signed by a registered surveyor and stamped with his seal, or in the case of an agency of the United States government or the state of Montana, the certificate may be signed by the survey party chief making the survey and approved, signed, and sealed by the registered surveyor in responsible charge of the agency.

History: En. Sec. 9, Ch. 202, L. 1963; R.C.M. 1947, 67-2009.

70-22-109. Duties of county clerk. (1) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the corner record is filed shall be placed by the clerk near that same corner on a cross-index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) There is no filing fee.

History: En. Sec. 7, Ch. 202, L. 1963; R.C.M. 1947, 67-2007; amd. Sec. 1, Ch. 143, L. 1981.

70-22-110. Surveyor to rehabilitate monument. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor must reconstruct or rehabilitate the monument of such corner and accessories to such corner so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

History: En. Sec. 8, Ch. 202, L. 1963; R.C.M. 1947, 67-2008.

Part 2

Montana Coordinate System

70-22-201. Coordinate systems adopted — designation — division of state into zones. (1) The North American datum systems of plane coordinates that have been established by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey) or a successor for defining and stating the positions or locations of points on the surface of the earth within the state of Montana are hereafter to be known and designated as the "Montana coordinate system NAD 27" and the "Montana coordinate system NAD 83".

(2) For the purpose of the use of the Montana coordinate system NAD 27, the state is divided into a north zone and a central zone and a south zone as provided in subsections (3) through (5).

(3) The area now included in the following counties shall constitute the north zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

(4) The area now included in the following counties shall constitute the central zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, McCone, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

(5) The area now included in the following counties shall constitute the south zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

(6) For the purpose of the use of the Montana coordinate system NAD 83, the state is a single zone.

History: En. Sec. 1, Ch. 232, L. 1965; amd. Sec. 1, Ch. 73, L. 1975; R.C.M. 1947, 67-2011; amd. Sec. 1, Ch. 137, L. 1987.

70-22-202. Designation of system by zone. (1) As established for use in the north zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, north zone".

(2) As established for use in the central zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, central zone".

(3) As established for use in the south zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, south zone".

History: En. Sec. 2, Ch. 232, L. 1965; R.C.M. 1947, 67-2012; amd. Sec. 2, Ch. 137, L. 1987.

70-22-203. Use of x- and y-coordinates. (1) For the Montana coordinate system NAD 27, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the appropriate zone of this system shall consist of two distances expressed in terms of a United States survey foot and decimals of a foot.

(2) For the Montana coordinate system NAD 83, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the zone shall consist of two distances expressed in either meters and decimals of a meter or in feet and decimals of a foot. The international conversion value (1 foot equals 0.3048 meters exactly) shall be used. The unit of measure shall be clearly stated when the coordinate values are expressed.

(3) One of the distances used to express a position or location, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the national ocean survey/national geodetic survey or its successors and whose plane coordinates have been computed on the systems designated by this part. Any such station may be used for establishing a survey connection to either Montana coordinate system.

History: En. Sec. 3, Ch. 232, L. 1965; R.C.M. 1947, 67-2013; amd. Sec. 3, Ch. 137, L. 1987.

70-22-204. Description of location. (1) For the purposes of describing the location of any survey station in Montana, it is considered a complete, legal, and satisfactory description of such location to give the position of the survey station on the system of plane coordinates designated in this part.

(2) When any tract of land to be defined by a single description extends from one into another of the NAD 27 coordinate zones, the positions of all points on its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

History: En. Sec. 4, Ch. 232, L. 1965; R.C.M. 1947, 67-2014; amd. Sec. 4, Ch. 137, L. 1987.

70-22-205. Technical description of zones. For purposes of more precisely defining the Montana coordinate systems NAD 27 and NAD 83, the following description by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey) is adopted:

(1) The Montana coordinate system NAD 27, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 51' and 48° 43', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(2) The Montana coordinate system NAD 27, central zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46° 27' and 47° 53', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 45° 50' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(3) The Montana coordinate system NAD 27, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44° 52' and 46° 24', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 44° 00' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(4) The Montana coordinate system NAD 83 is a Lambert conformal conic projection of the GRS 80 (Geodetic Reference System 1980) ellipsoid, having standard parallels of north latitudes 45° 00' and 49° 00', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 44° 15' north latitude. This origin is given the coordinates: x = 600,000 meters and y = 0 meters.

History: En. Sec. 5, Ch. 232, L. 1965; amd. Sec. 2, Ch. 73, L. 1975; R.C.M. 1947, 67-2015; amd. Sec. 5, Ch. 137, L. 1987.

70-22-206. Conformity to standards required for use of coordinates in recorded instrument. No coordinates based on the Montana coordinate systems NAD 27 and NAD 83 purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless the coordinates have been established in conformity with the national prescribed standards for third-order class II horizontal control surveys and provided that these surveys have been tied to or originated from monumented first- or second-order horizontal control stations that are adjusted to and published in the national network of geodetic control and are within 3 miles of said land boundaries. Standards of accuracy and specifications apply for first-, second-, and third-order geodetic surveying as prepared and published by the federal geodetic control committee (FGCC) of the United States department of commerce or its successors. Publication of the existing control stations or acceptance with intent to publish newly established control stations by the national ocean survey/national geodetic survey constitutes evidence of adherence to FGCC specifications.

History: En. Sec. 6, Ch. 232, L. 1965; R.C.M. 1947, 67-2016; amd. Sec. 6, Ch. 137, L. 1987.

70-22-207. Use of term Montana coordinate system limited. The use of the term "Montana coordinate system NAD 27 north, central, or south zone" or "Montana coordinate system NAD 83" on any map, report of survey, or other document shall be limited to coordinates based on the Montana coordinate systems as defined in this part.

History: En. Sec. 7, Ch. 232, L. 1965; R.C.M. 1947, 67-2017; amd. Sec. 7, Ch. 137, L. 1987.

70-22-208. Public land survey description to prevail. Whenever coordinates based on the Montana coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record.

History: En. Sec. 8, Ch. 232, L. 1965; R.C.M. 1947, 67-2018; amd. Sec. 8, Ch. 137, L. 1987.

70-22-209. Purchaser or mortgagee not required to rely on description using systems. Nothing contained in this part shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Montana coordinate systems.

History: En. Sec. 9, Ch. 232, L. 1965; R.C.M. 1947, 67-2019; amd. Sec. 9, Ch. 137, L. 1987.

70-22-210. Limit on use of Montana coordinate system NAD 27. The Montana coordinate system NAD 27 north, central, and south zone may not be used after July 1, 1993; the Montana coordinate system NAD 83 is the sole system to be used after this date.

History: En. Sec. 10, Ch. 137, L. 1987.

CHAPTER 23

UNIT OWNERSHIP ACT — CONDOMINIUMS

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Chapter Cross-References

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Common elements serving residential or commercial development — assessment and taxation, 15-8-512.

Montana Timeshare Act, Title 37, ch. 53.

Part 1

General Provisions

70-23-101. Short title. This chapter may be cited as the "Unit Ownership Act".

History: En. Sec. 1, Ch. 120, L. 1965; R.C.M. 1947, 67-2301.

70-23-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) expenses of administration, maintenance, repair, or replacement of the common elements;

(b) expenses agreed upon as common by all the unit owners; and

(c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the particular condominium.

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter.

(6) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter.

(7) "Department" means the department of commerce.

(8) "General common elements", unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety or normally in common use.

(9) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of the other units.

(10) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means the owners of more than 50% in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(11) "Manager" means the manager, board of managers, or other person in charge of the administration of or managing the property.

(12) "Project" means a real estate condominium project, a plan whereby a condominium of two or more units located on property submitted to the provisions of this chapter are offered or proposed to be offered for sale.

(13) "Property" means the land, all buildings, improvements, and structures thereon and all easements, rights, and appurtenances belonging thereto which are submitted to the provisions of this chapter.

(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(15) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16) "Unit designation" means the number, letter, or combination thereof designating a unit in the declaration.

(17) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit shall be considered a unit owner.

History: En. Sec. 2, Ch. 120, L. 1965; amd. Sec. 1, Ch. 150, L. 1973; R.C.M. 1947, 67-2302; amd. Sec. 2, Ch. 274, L. 1981.

70-23-103. Applicability — submission by declaration required. In order to submit any property to the provisions of this chapter, the sole owner or sole lessee or all of the owners or all of the lessees thereof shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration shall be executed in accordance with 70-23-301.

History: En. Sec. 3, Ch. 120, L. 1965; amd. Sec. 2, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.

Part 2

Regulation of Unit Sales Prior to Construction

Part Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

70-23-201. Disposition of funds from purchase or lease of unit prior to completion of construction. (1) If units are conveyed or leased prior to the completion of construction of the building within which such unit is located and all of the general common elements of the project (except those general common elements forming a part of a separate building enclosing other units) as set forth in the declaration filed pursuant to 70-23-301, all moneys from the sale of the units including any payments made on loan commitments from lending institutions shall be deposited in escrow by the developer in a fund with a bank, savings and loan association, or company authorized to do business in the state under an escrow arrangement.

(2) No disbursements may be made from such fund until the completion of the building and general common elements or until compliance with the provisions of 70-23-202 through 70-23-206, whichever comes first.

(3) If no disbursements are made until after the building and general common elements have been completed, the developer need not comply with 70-23-202 through 70-23-206.

(4) If 70-23-202 through 70-23-206 have been complied with, disbursements from such fund may be made from time to time to pay for construction costs of the building in proportion to the valuation of the work completed by the contractor as certified by a registered architect or registered professional engineer and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the fund shall be disbursed only upon completion of the building, free and clear of all construction and materialman's liens. The department may impose other restrictions relative to the retention and disbursement of the fund.

History: **En. 67-2303.1 by Sec. 3, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.1.**

70-23-202. Notice of intention to sell by developer — fees. (1) The developer of a project shall notify the department in writing prior to the time the project or units thereof are to be offered for sale.

(2) The notice of intention to sell shall fully disclose all material facts on a form prescribed by the department.

(3) The fee for filing the notice of intention is $50. For the inspection of the project and examination of the accounts and records of the developer, the department may require the developer to pay the costs thereof, not to exceed the sum of $100 for each day actually required to perform such duties, but in no event shall the total charges exceed the sum of $500.

History: **En. 67-2303.2 by Sec. 4, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.2.**

70-23-203. Examination of project by department after notice of intent to sell — report. (1) After receipt of the notice of intention to sell, the department shall inspect the project and examine the accounts and records of the developer.

(2) The department shall make a report of its inspection which shall contain all material facts reasonably available and which shall be on file and available for public inspection in the office of the director.

(3) The department may issue a preliminary report if the notice of intention is incomplete in some respect but the department is satisfied that the report will adequately disclose all material facts which a prospective purchaser should consider and that adequate protection for purchasers' funds has been provided.

(4) A developer may not use a preliminary report to contract for the sale of a unit unless he files the notice of intention to sell, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a depository in accordance with 70-23-201.

History: En. 67-2303.3 by Sec. 5, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.3.

70-23-204. Refund of purchaser's funds for change in building plans — final report. (1) The funds of any purchaser obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a city or county officer having jurisdiction over issuance of permits for construction of buildings unless the purchaser's written acceptance of the specific change is obtained.

(2) Rights under contracts of sale of condominium units under a preliminary report are not enforceable against purchasers until purchasers have had a full opportunity to read the department's final report on the project and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

(3) If the final report is not issued within 1 year from the date of issuance of the preliminary report, purchasers are entitled to refund of all moneys paid by the purchasers thereunder without further obligation.

History: En. 67-2303.4 by Sec. 6, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.4; amd. Sec. 11, Ch. 115, L. 1979.

70-23-205. Final report prior to completion of project — supplementary report. (1) The department may not issue a final report prior to completion of construction of a project unless:

(a) there is filed with the department:

(i) a verified statement showing all costs involved in completing the project, including land, ground lease payments, and equipment lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, and other costs which must be paid on or before the completion of construction of the building;

(ii) a verified estimate of the time of completion of construction of the total project;

(iii) satisfactory evidence of sufficient funds to cover the total project cost from purchasers' funds, equity funds, interim or permanent loan commitments, or other sources;

(iv) a copy of the executed construction contract;

(v) satisfactory evidence of a performance bond of not less than 100% of the cost of construction with a reliable surety company;

(vi) if purchasers' funds are to be used for construction, an executed copy of the escrow agreement for the escrow fund required under 70-23-201 for financing construction, which shall expressly provide for:

(A) no disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and

(B) no disbursements from the balance of the escrow fund after payment of construction costs pursuant to subsection (1)(a)(vi)(A) until the escrow agent receives satisfactory evidence that all construction and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute;

(b) the declaration provided for in 70-23-301 has been filed.

(2) If after a final report has been issued any circumstance occurs which would render the final report misleading as to purchasers or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the department to enable it to issue a supplementary report describing the changes. Sales shall not resume until the supplementary report has been issued.

History: En. 67-2303.5 by Sec. 7, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.5.

70-23-206. No binding contract until purchaser has received final report. (1) The developer or any other person offering any unit in a condominium project prior to completion of its construction shall not enter into a binding contract or agreement for the sale or resale thereof until:

(a) a true copy of the department's final report thereon with all supplementary reports has been given to the prospective purchaser;

(b) the prospective purchaser has been given an opportunity to read the reports; and

(c) the prospective purchaser executes a receipt for the reports.

(2) Receipts taken for any report shall be kept on file in possession of the developer, subject to inspection at a reasonable time by the department for a period of 3 years from the date the receipt was taken.

History: En. 67-2303.6 by Sec. 8, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.6.

Part 3

Creation — Declaration and Bylaws

70-23-301. Contents of declaration. A declaration shall contain:

(1) a description of the land, whether leased or in fee simple, on which the building is or is to be located;

(2) the name by which the property shall be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner therein;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of such person which shall be within the county in which the property is located;

(8) any other details regarding the property that the person executing the declaration considers desirable.

History: **En. Sec. 14, Ch. 120, L. 1965; amd. Sec. 11, Ch. 150, L. 1973; R.C.M. 1947, 67-2314.**

70-23-302. Preliminary declaration. A preliminary declaration, setting forth as many of the particulars required by 70-23-301 as may then be practicable, may be recorded before construction of the building described in the declaration is completed. The preliminary declaration shall not relieve the owner from the necessity of filing the declaration as required by 70-23-301.

History: **En. Sec. 15, Ch. 120, L. 1965; R.C.M. 1947, 67-2315.**

70-23-303. Name of property — similarity prohibited. No property shall bear a name using a word which is the same as, similar to, or pronounced the same as a word in the name of any other property or subdivision in the same county, except for the words "apartment", "motel", "building", "court", "place", or similar words.

History: **En. Sec. 16, Ch. 120, L. 1965; R.C.M. 1947, 67-2316.**

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

70-23-304. Declaration to be approved by department of revenue before recording. Before a declaration may be recorded in the county in which the property is located, it must be approved by the department of revenue. A declaration must be approved unless:

(1) the name does not comply with 70-23-303; and

(2) all taxes and assessments due and payable have not been paid.

History: **En. Sec. 17, Ch. 120, L. 1965; amd. Sec. 40, Ch. 391, L. 1973; R.C.M. 1947, 67-2317; amd. Sec. 135, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 279, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 279 in (1) substituted "does not comply" for "is proper so as to comply"; and in (2) substituted "have not been paid" for "have been paid".

70-23-305. Recording of declaration. (1) When a declaration is made and approved as required, it must, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date of recording must be entered on the declaration.

(2) At the time of recording a declaration, the person offering it for record shall also file a copy, certified by the recording officer to be a true copy, with the department of revenue.

(3) If the property is located in a city or town, a copy of the declaration only must also be filed with the city or town clerk at the time of recording.

History: **En. Sec. 18, Ch. 120, L. 1965; amd. Sec. 41, Ch. 391, L. 1973; R.C.M. 1947, 67-2318; amd. Sec. 1, Ch. 85, L. 1991; amd. Sec. 136, Ch. 27, Sp. L. November 1993.**

70-23-306. Floor plans recorded with declaration — certification. (1) Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit, including the unit designation, location and dimensions of each unit, and the common areas to which each has access.

(2) There shall be attached to the floor plans a statement of a registered architect, registered professional engineer, or registered professional land surveyor who has reviewed the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits. If the plans do not include a verified statement by an architect, engineer, or surveyor that the plans fully and accurately depict the layout, location, unit designation, and dimensions of each unit as built, there shall be recorded within 30 days from the date of completion of the building or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered professional land surveyor certifying that the floor plans previously filed or being filed simultaneously with the amendment fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

History: En. Sec. 19, Ch. 120, L. 1965; amd. Sec. 12, Ch. 150, L. 1973; R.C.M. 1947, 67-2319; amd. Sec. 1, Ch. 114, L. 1985.

Cross-References

Licensing of architects, Title 37, ch. 65, part 3.

Licensing of engineers and land surveyors, Title 37, ch. 67, part 3.

70-23-307. Bylaws — adoption, recording, and amendment. (1) The unit owners of each property shall adopt bylaws to govern the administration of the property.

(2) A copy of the bylaws, certified by the presiding officer and secretary of the association, shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(3) An amendment of the bylaws shall not be effective unless approved by 75% of the unit owners and until a copy of the bylaws, as amended, certified by the presiding officer and secretary of the association of unit owners, is recorded.

History: En. Sec. 20, Ch. 120, L. 1965; R.C.M. 1947, 67-2320.

70-23-308. Contents of bylaws. The bylaws shall provide for:

(1) the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of the directors; and whether or not the board may engage the services of a manager or managing agent;

(2) the method of calling meetings of the unit owners and the percentage, if other than a majority as defined by 70-23-102(10), that shall constitute a quorum;

(3) the election of a chairman, a secretary, and a treasurer;

(4) the maintenance, upkeep, and repair of the common elements and payment for the expense thereof, including the method of approving payment vouchers;

(5) the employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;

(6) the manner of collecting from the unit owners their share of the common expenses;

(7) the method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;

(8) such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners;

(9) the method of amending the bylaws subject to 70-23-307.

History: En. Sec. 21, Ch. 120, L. 1965; R.C.M. 1947, 67-2321.

Part 4

Nature of the Ownership Interest

70-23-401. Property status of the unit. While the property is submitted to this chapter, a unit in the building may be individually conveyed, leased, or encumbered and may be the subject of ownership, possession, or sale and of all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

History: En. Sec. 4, Ch. 120, L. 1965; amd. Sec. 9, Ch. 150, L. 1973; R.C.M. 1947, 67-2304.

70-23-402. Exclusive ownership and possession of unit — joint ownership. (1) Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

(2) A unit may be jointly or commonly owned by more than one person.

History: En. Sec. 5, Ch. 120, L. 1965; amd. Sec. 10, Ch. 150, L. 1973; R.C.M. 1947, 67-2305.

70-23-403. Common elements — undivided interest of unit owner. (1) Each unit owner shall be entitled to an undivided interest in the common elements in the percentage expressed in the declaration. Such percentage shall be in the approximate relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the particular common elements. Value need not conform to market value.

(2) The percentage of undivided interest of each unit owner in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

History: En. Sec. 6, Ch. 120, L. 1965; R.C.M. 1947, 67-2306.

70-23-404. Common elements — undivided interest to remain attached to unit. The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

History: **En. Sec. 7, Ch. 120, L. 1965; R.C.M. 1947, 67-2307(1).**

70-23-405. Common elements to remain undivided — partition prohibited. The common elements shall remain undivided, and no unit owner shall bring any action for partition or division of any part thereof except as provided in 70-23-805. Any covenant to the contrary is void.

History: **En. Sec. 7, Ch. 120, L. 1965; R.C.M. 1947, 67-2307(2).**

Part 5

Rights and Duties Incidental to Unit Ownership

70-23-501. Common profits and expenses. The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the percentage of undivided interest of each in the common elements.

History: **En. Sec. 8, Ch. 120, L. 1965; R.C.M. 1947, 67-2308.**

70-23-502. Certain work on unit by owner prohibited. A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained.

History: **En. Sec. 9, Ch. 120, L. 1965; R.C.M. 1947, 67-2309.**

70-23-503. Common elements — use by unit owner. Each unit owner may use the common elements in accordance with the purposes for which they are intended but may not hinder or encroach upon the lawful rights of the other unit owners.

History: **En. Sec. 10, Ch. 120, L. 1965; R.C.M. 1947, 67-2310.**

70-23-504. Maintenance and improvement of common elements. (1) The necessary work of maintenance, repair, and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(2) The association of unit owners shall have the right, to be exercised by the manager, to have access to each unit as may be necessary for the maintenance, repair, or replacement of the common elements or to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit.

History: **En. Sec. 11, Ch. 120, L. 1965; R.C.M. 1947, 67-2311.**

70-23-505. Abandonment or waiver of use not to effect exemption. No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

History: **En. Sec. 12, Ch. 120, L. 1965; R.C.M. 1947, 67-2312.**

70-23-506. Compliance with bylaws, rules, and covenants required — action. Each unit owner shall comply with the bylaws and with the administrative rules adopted pursuant thereto and with the covenants, conditions, and restrictions in the declaration or in the deed to his unit. Failure to comply therewith shall be grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner.

History: En. Sec. 13, Ch. 120, L. 1965; R.C.M. 1947, 67-2313.

Part 6

Conveyances, Liens, and Common Expenses

70-23-601. Contents of deed or lease of unit. The deed or lease of a unit shall contain:

(1) a description of the land, the name of the property, and the recording index numbers and date of recording of the declaration;

(2) the unit designation of the unit;

(3) the use for which the unit is intended;

(4) the percentages of undivided interest in the common elements appertaining to the unit;

(5) any further details the grantor and grantee or lessor and lessee may consider desirable.

History: En. Sec. 22, Ch. 120, L. 1965; amd. Sec. 13, Ch. 150, L. 1973; R.C.M. 1947, 67-2322.

70-23-602. Liens to be satisfied or released at time of first conveyance. At the time of the first conveyance or lease of each unit following the recording of the declaration, every mortgage and other lien affecting such unit, including the undivided interest of the unit in the common elements, shall be paid and satisfied of record or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded.

History: En. Sec. 23, Ch. 120, L. 1965; amd. Sec. 14, Ch. 150, L. 1973; R.C.M. 1947, 67-2323.

Cross-References

Mortgages, Title 71, ch. 1.

Liens, Title 71, ch. 3.

70-23-603. Lien allowable against unit not against the property. Subsequent to recording a declaration and while the property remains subject to this chapter, no lien shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

History: En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(1).

Cross-References

Construction liens, Title 71, ch. 3, part 5.

70-23-604. Construction or materialman's lien — no effect on nonconsenting owner — exception. No labor performed or materials furnished with the consent or at the request of a unit owner, his agent, contractor, or subcontractor shall be the basis for the filing of a construction or materialman's lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent shall be considered given by the owner of any unit in the case of emergency repairs thereto performed or furnished with the consent or at the request of the manager.

History: **En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(2).**

Cross-References

Construction liens, Title 71, ch. 3, part 5.

70-23-605. Lien effective against two or more units — release from. If a lien becomes effective against two or more units, the owner of each unit subject to such a lien shall have the right to have his unit released from the lien by payment of the amount of the lien attributable to his unit. The amount of the lien attributable to a unit and the payment required to satisfy such a lien, in the absence of agreement, shall be determined by application of the percentage established in the declaration. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the undivided interest in the common element appertaining thereto not so released by payment, satisfaction, or discharge.

History: **En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(3).**

70-23-606. Records of receipts and expenditures affecting common elements — inspection. (1) The manager shall keep detailed accurate records in chronological order of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred.

(2) Such records and the vouchers authorizing the payments and receipts for payments shall be available for examination at the manager's place of business by the unit owners at convenient hours of weekdays.

History: **En. Sec. 25, Ch. 120, L. 1965; R.C.M. 1947, 67-2325; amd. Sec. 2, Ch. 385, L. 1983.**

70-23-607. Claim for common expenses — priority of lien — contents — recording. (1) Whenever an association of unit owners acting through its manager furnishes to a unit any services, labor, or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses, and the lien shall be prior to all other liens or encumbrances upon the unit except:

(a) tax and assessment liens; and

(b) a first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing:

(a) a true statement of the account due for such common expenses after deducting all just credits and offsets;

(b) the name of the owner of the unit or reputed owner, if known;

(c) a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under Title 71,

chapter 3, part 5. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

History: En. Sec. 26, Ch. 120, L. 1965; R.C.M. 1947, 67-2326; amd. Sec. 15, Ch. 202, L. 1987.

70-23-608. Foreclosure of lien under claim for common expenses — action without foreclosure. (1) The proceedings to foreclose liens created by 70-23-607 shall conform as nearly as possible to the proceedings to foreclose liens created by Title 71, chapter 3, part 5. The lien may be enforced by the manager acting on behalf of the association of unit owners.

(2) An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

History: En. Sec. 27, Ch. 120, L. 1965; R.C.M. 1947, 67-2327; amd. Sec. 16, Ch. 202, L. 1987.

70-23-609. Foreclosure on unit — payment of rent — purchase of unit by manager. (1) In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent.

(2) The manager acting on behalf of the unit owners shall have power, unless prohibited by the declaration, to bid on the unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

History: En. Sec. 28, Ch. 120, L. 1965; R.C.M. 1947, 67-2328; amd. Sec. 6, Ch. 84, L. 1983.

70-23-610. Purchaser at foreclosure sale not totally liable for prior common expenses. Where the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, such purchaser, his successors, and assigns shall not be liable for any of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid share of common expenses shall be a common expense of all the unit owners, including such purchaser, his successors, and assigns.

History: En. Sec. 29, Ch. 120, L. 1965; R.C.M. 1947, 67-2329.

70-23-611. Joint liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit, the grantee is jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser, the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case is not liable for nor is the unit when conveyed subject to a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth.

History: En. Sec. 30, Ch. 120, L. 1965; R.C.M. 1947, 67-2330; amd. Sec. 12, Ch. 115, L. 1979.

70-23-612. Insurance of building — premiums as common expenses. (1) The manager as trustee for the unit owners shall, if required by the declaration, the bylaws, or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, without prejudice to the right of each unit owner to insure his own unit for his own benefit.

(2) The premiums for such insurance on the building are common expenses.

History: **En. Sec. 31, Ch. 120, L. 1965; R.C.M. 1947, 67-2331.**

70-23-613. Disclosure by seller — seller to furnish documents — delay period. (1) Whenever a person, corporation, or other legal entity constitutes a majority of the unit owners, the seller or his agent, prior to signing any buy-sell agreement, shall give to any person purchasing or expressing a desire to purchase one of the project units notice that:

(a) the seller or other person constitutes a majority of the unit owners;

(b) any bylaws and administrative regulations governing the operation of the development and the association, as adopted by the association, have been adopted by the seller or other person acting as a majority of the unit owners; and

(c) any change in the bylaws or administrative regulations occurring while the seller or other person constitutes a majority of the unit owners may be made only with the approval of the seller or other person constituting a majority of unit owners.

(2) Upon the request of any person purchasing or expressing a desire to purchase one of the project units, the seller or his agent shall furnish to that buyer or prospective buyer, prior to signing any buy-sell agreement, a copy of the Unit Ownership Act, the bylaws of the association, and any administrative regulations governing the operation of the project or the association.

(3) Any buy-sell agreement shall provide that it is not effective until 72 hours after the prospective purchaser has received the documents required in subsection (2), and during that delay the prospective purchaser may withdraw his offer without penalty.

History: **En. Sec. 1, Ch. 385, L. 1983.**

Part 7

Taxation and Exemptions (Repealed. Sec. 4, Ch. 452, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

70-23-701. En. Sec. 40, Ch. 120, L. 1965; amd. Sec. 42, Ch. 391, L. 1973; R.C.M. 1947, 67-2340.

70-23-702. En. Sec. 41, Ch. 120, L. 1965; R.C.M. 1947, 67-2341.

70-23-703. En. Sec. 42, Ch. 120, L. 1965; amd. Sec. 43, Ch. 391, L. 1973; R.C.M. 1947, 67-2342.

Part 8

Removal of Property From Unit Ownership Act

70-23-801. Removal from chapter — recorded instrument — consent of lienholders. All of the unit owners may remove a property from the provisions of this chapter by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of this chapter.

History: **En. Sec. 32, Ch. 120, L. 1965; R.C.M. 1947, 67-2332; amd. Sec. 3, Ch. 452, L. 1985.**

70-23-802. Obsolete property — restoration or sale — removal from chapter. Ninety percent of the unit owners may agree that the property is obsolete in whole or in part and whether or not it shall be renewed and restored or sold and the proceeds of sale distributed. If 90% of the unit owners agree to renew and restore the property, the expense thereof shall be paid by all the unit owners as common expenses. If 90% of the unit owners agree to sell the property, the property shall be considered removed from the provisions of this chapter.

History: **En. Sec. 33, Ch. 120, L. 1965; R.C.M. 1947, 67-2333.**

70-23-803. Damage to property — decision not to repair or rebuild — removal from chapter. If within 60 days after the date of the damage to or destruction of all or part of the property the association of unit owners does not decide to repair, reconstruct, or rebuild, the property shall be considered removed from the provisions of this chapter.

History: **En. Sec. 34, Ch. 120, L. 1965; R.C.M. 1947, 67-2334.**

70-23-804. Effect of removal — ownership in common — liens. If the property is removed from the provisions of this chapter, as provided by 70-23-801 through 70-23-803, the property shall be considered owned in common by all the unit owners. The percentage of undivided interest of each unit owner in the property owned in common shall be the same as the percentage of undivided interest previously owned by such owner in the common elements. Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common.

History: **En. Sec. 35, Ch. 120, L. 1965; R.C.M. 1947, 67-2335.**

70-23-805. Effect of removal — subject to partition — sale. If the property is removed from the provisions of this chapter, as provided in 70-23-801 through 70-23-803, it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

History: **En. Sec. 36, Ch. 120, L. 1965; R.C.M. 1947, 67-2336.**

70-23-806. Removal no bar to resubmission. The removal of the property from the provisions of this chapter shall in no way bar its resubmission.

History: **En. Sec. 37, Ch. 120, L. 1965; R.C.M. 1947, 67-2337.**

Part 9
Actions and Process

Part Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

70-23-901. Actions — service of process. (1) Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager with respect to any cause of action relating to the common elements or more than one unit.

(2) Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process.

(3) At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of $10 which shall be a taxable disbursement.

History: En. Sec. 38, Ch. 120, L. 1965; R.C.M. 1947, 67-2338.

70-23-902. Change of agent for service of process. If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in 70-23-901, it shall record an amendment to the declaration. The amendment shall be certified by the presiding officer and the secretary of the association of unit owners and shall state the name of the successor with his residence or place of business as required by 70-23-301(7) and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

History: En. Sec. 39, Ch. 120, L. 1965; R.C.M. 1947, 67-2339.

Part 10
Enforcement and Penalty

70-23-1001. Investigation by department — injunction. If the department has satisfactory evidence to indicate that any person has violated any provision of this chapter, it may conduct an investigation and bring an action for injunction.

History: En. Sec. 15, Ch. 150, L. 1973; R.C.M. 1947, 67-2343.

Cross-References

Injunctions, Title 27, ch. 19.

70-23-1002. Penalty. Any person who violates any provision of this chapter or any rule of the department under such sections is guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000 or by imprisonment for not more than 1 year, or both.

History: En. Sec. 16, Ch. 150, L. 1973; R.C.M. 1947, 67-2344.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

CHAPTER 24

RESIDENTIAL LANDLORD AND TENANT ACT OF 1977

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Chapter Cross-References

Residential property tax credit for elderly, 15-30-171 through 15-30-179.

Part 1

General Provisions

70-24-101. Short title. This chapter may be cited as "The Montana Residential Landlord and Tenant Act of 1977".

History: En. 42-401 by Sec. 1, Ch. 313, L. 1977; R.C.M. 1947, 42-401.

70-24-102. Purposes — liberal construction to promote. (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are to:

(a) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; and

(b) encourage landlords and tenants to maintain and improve the quality of housing.

History: En. 42-402 by Sec. 2, Ch. 313, L. 1977; R.C.M. 1947, 42-402.

70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household.

Dwelling unit, in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(6) "Landlord" means:

(a) the owner, lessor, or sublessor of:

(i) the dwelling unit or the building of which it is a part; or

(ii) a mobile home park; or

(b) a manager of the premises who fails to disclose the managerial position.

(7) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.

(8) "Mobile home park" means a trailer court as defined in 50-52-101.

(9) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(10) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(11) "Person" includes an individual or organization.

(12) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13) "Rent" means all payments to be made to the landlord under the rental agreement.

(14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

(16) "Single-family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(17) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

History: En. 42-409 by Sec. 9, Ch. 313, L. 1977; R.C.M. 1947, 42-409; amd. Sec. 2, Ch. 417, L. 1979; amd. Sec. 1, Ch. 222, L. 1993; amd. Sec. 2, Ch. 343, L. 1993; amd. Sec. 1, Ch. 470, L. 1993; amd. Sec. 1, Ch. 487, L. 1993; amd. Sec. 65, Ch. 18, L. 1995; amd. Sec. 1, Ch. 401, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 401 in definition of case of emergency, in second sentence and near end after "in which the tenant", inserted "or landlord"; and made minor changes in style.

70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to his interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement which includes hunting, fishing, or agricultural privileges along with the use of the dwelling unit.

History: En. 42-408 by Sec. 8, Ch. 313, L. 1977; R.C.M. 1947, 42-408.

70-24-105. Supplementary principles of law applicable. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement its provisions.

History: En. 42-403 by Sec. 3, Ch. 313, L. 1977; R.C.M. 1947, 42-403.

Cross-References

Who may contract, 28-2-201.

Circumstances that affect validity of apparent consent, Title 28, ch. 2, part 4.

Agency, Title 28, ch. 10.

70-24-106. Construction against implicit repeal. No part of this chapter is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: En. 42-404 by Sec. 4, Ch. 313, L. 1977; R.C.M. 1947, 42-404.

70-24-107. Territorial application. This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: En. 42-407 by Sec. 7, Ch. 313, L. 1977; R.C.M. 1947, 42-407.

70-24-108. What constitutes notice. (1) A person has notice of a fact if:

(a) the person has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the person at the place held out by the person as the place for receipt of the communication or, in the absence of a designation, to the person's last-known address. If notice is made with a certificate of mailing or by certified mail, service of the notice is considered to have been made upon the date 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised reasonable diligence.

History: En. 42-412 by Sec. 12, Ch. 313, L. 1977; R.C.M. 1947, 42-412; amd. Sec. 2, Ch. 222, L. 1993.

70-24-109. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

History: En. 42-410 by Sec. 10, Ch. 313, L. 1977; R.C.M. 1947, 42-410.

Part 2
Rental Agreements

70-24-201. Rental agreement — terms and conditions. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit as determined by the landlord;

(b) rent is payable at the landlord's address;

(c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2) of this section.

History: En. 42-413 by Sec. 13, Ch. 313, L. 1977; R.C.M. 1947, 42-413.

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

70-24-202. Prohibited provisions in rental agreements. A rental agreement may not provide that a party:

(1) agrees to waive or forego rights or remedies under this chapter;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(3) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney's fees connected therewith.

History: **En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(1).**

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

70-24-203. Agreement not to permit receipt of rent free of obligation. A rental agreement or a document related thereto may not permit the receipt of rent free of the obligation to comply with 70-24-303.

History: **En. 42-416 by Sec. 16, Ch. 313, L. 1977; R.C.M. 1947, 42-416.**

70-24-204. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

History: **En. 42-414 by Sec. 14, Ch. 313, L. 1977; R.C.M. 1947, 42-414.**

Part 3

Rights and Duties of the Parties

70-24-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section shall be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

History: **En. 42-418 by Sec. 18, Ch. 313, L. 1977; R.C.M. 1947, 42-418.**

70-24-302. Landlord to deliver possession of dwelling unit. (1) At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-24-303.

A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship.

History: En. 42-419 by Sec. 19, Ch. 313, L. 1977; R.C.M. 1947, 42-419; amd. Sec. 3, Ch. 222, L. 1993.

70-24-303. Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(e) unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(f) supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(g) install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under the landlord's control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(g), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) of this section and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection (1)(g).

History: En. 42-420 by Sec. 20, Ch. 313, L. 1977; R.C.M. 1947, 42-420; amd. Sec. 1, Ch. 567, L. 1989; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 2, Ch. 401, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 401 in (1)(e), at beginning, inserted "unless otherwise provided in the rental agreement"; and made minor changes in style.

70-24-304. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. He remains liable to the tenant for all security recoverable by the tenant pursuant to chapter 25 of this title and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

History: En. 42-421 by Sec. 21, Ch. 313, L. 1977; R.C.M. 1947, 42-421.

70-24-305. Transfer of premises by tenant. (1) A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

(2) The sale or rental of a mobile home located upon a rental lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.

(3) A mobile home owner who owns the mobile home but rents the lot space has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.

History: En. Sec. 4, Ch. 222, L. 1993.

70-24-306 through 70-24-310 reserved.

70-24-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time that the tenant enters into the rental agreement or when it is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of the tenant's bargain, it is not valid until 7 days after written notice to the tenant in the case of a week to week tenancy or 30 days' written notice in the case of tenancies from month to month.

History: En. 42-423 by Sec. 23, Ch. 313, L. 1977; R.C.M. 1947, 42-423; amd. Sec. 3, Ch. 470, L. 1993; amd. Sec. 5, Ch. 487, L. 1993; amd. Sec. 1, Ch. 389, L. 1995.

Cross-References

Mobile home parks — grounds for termination of rental agreement, 70-24-436.

70-24-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter.

History: En. 42-424 by Sec. 24, Ch. 313, L. 1977; R.C.M. 1947, 42-424; amd. Sec. 5, Ch. 222, L. 1993.

70-24-313. Mobile home parks — park rules. (1) A mobile home park landlord may adopt a rule concerning the rental occupancy of a mobile home space and the use of common areas and facilities in accordance with 70-24-311.

A rule may not be unreasonable, and a rule that does not apply uniformly to all mobile home residents of a similar class creates a rebuttable presumption, as defined in 70-24-431, that the rule is unfair.

(2) Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

History: En. Sec. 2, Ch. 487, L. 1993.

Cross-References

Mobile home park defined, 70-24-103.

70-24-314. Resident associations — meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the mobile home park landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenant association.

(2) The mobile home park landlord may not prohibit meetings by a tenant association or tenants relating to mobile home living.

History: En. Sec. 3, Ch. 487, L. 1993.

70-24-315. Mobile home park landlord's road maintenance obligations. In addition to the obligations imposed by 70-24-303, the mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing as is reasonable to keep the roads passable.

History: En. Sec. 4, Ch. 487, L. 1993.

Cross-References

Landlord defined, 70-24-103.

70-24-316 through 70-24-320 reserved.

70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises including the living room, bedroom, kitchen, bathroom, and dining room in a reasonable manner considering the purposes for which they were designed and intended. This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, provided the landlord has consented in writing. The landlord may not unreasonably withhold consent, provided that the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

History: En. 42-422 by Sec. 22, Ch. 313, L. 1977; R.C.M. 1947, 42-422; amd. Sec. 6, Ch. 222, L. 1993.

70-24-322. Tenant to occupy as dwelling unit only — extended absence. (1) Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

History: En. 42-425 by Sec. 25, Ch. 313, L. 1977; R.C.M. 1947, 42-425.

Part 4
Remedies

70-24-401. Administration of remedies — enforcement. (1) The remedies provided by this chapter must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Rules and regulations that are not a part of this chapter and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

History: En. 42-405 by Sec. 5, Ch. 313, L. 1977; R.C.M. 1947, 42-405; amd. Sec. 7, Ch. 222, L. 1993.

70-24-402. Settlement of disputed claim or right. A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

History: En. 42-406 by Sec. 6, Ch. 313, L. 1977; R.C.M. 1947, 42-406.

70-24-403. Prohibited provision in rental agreement — unenforceability — damages. (1) A provision prohibited by 70-24-202 included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover, in addition to his actual damages, an amount up to 3 months' periodic rent.

History: En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(2).

70-24-404. Unconscionability — court discretion to refuse enforcement. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision thereof is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

History: **En. 42-411 by Sec. 11, Ch. 313, L. 1977; R.C.M. 1947, 42-411.**

70-24-405. Failure of landlord to deliver possession — tenant's remedies. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by him.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

History: **En. 42-427 by Sec. 27, Ch. 313, L. 1977; R.C.M. 1947, 42-427.**

70-24-406. Failure of landlord to maintain premises — tenant's remedies. (1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by the tenant, a member of the tenant's family, or other persons on the premises with the tenant's consent.

(b) make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title.

History: En. 42-426 by Sec. 26, Ch. 313, L. 1977; R.C.M. 1947, 42-426; amd. Sec. 8, Ch. 222, L. 1993.

70-24-407. Damages for minor violations by landlord. If the landlord fails to comply with the rental agreement or 70-24-303 and the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages for the breach under 70-24-406(2).

History: En. 42-428 by Sec. 28, Ch. 313, L. 1977; R.C.M. 1947, 42-428.

70-24-408. Purposeful or negligent failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, he may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of his family, or other person on the premises with his consent.

History: En. 42-429 by Sec. 29, Ch. 313, L. 1977; R.C.M. 1947, 42-429.

70-24-409. Fire or casualty damage — rights of tenant. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant, the tenant's family, or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

History: En. 42-431 by Sec. 31, Ch. 313, L. 1977; R.C.M. 1947, 42-431.

70-24-410. Unlawful or unreasonable entry by landlord — tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

History: En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(2).

70-24-411. Unlawful ouster, exclusion, or diminution of service — tenant's remedies. If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent.

History: En. 42-432 by Sec. 32, Ch. 313, L. 1977; R.C.M. 1947, 42-432.

70-24-412 through 70-24-420 reserved.

70-24-421. Action for nonpayment of rent — tenant's counterclaim. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

History: En. 42-430 by Sec. 30, Ch. 313, L. 1977; R.C.M. 1947, 42-430.

70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice, subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If the breach involves an unauthorized pet, the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than 3 days after receipt of the notice if the breach is not remedied within that time. This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home.

(c) If the breach involves unauthorized persons residing in the rental unit, the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than 3 days after receipt of the notice if the breach is not remedied within that time. This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home.

(d) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) (a) Except as provided in subsection (2)(b), if rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(b) For a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home, the notice period referred to in subsection (2)(a) is 15 days.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the breach under the provisions of 70-24-321(2).

(4) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (5), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(5) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(6) The landlord is not bound by this section in the event that the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441.

History: En. 42-433 by Sec. 33, Ch. 313, L. 1977; R.C.M. 1947, 42-433; amd. Sec. 1, Ch. 221, L. 1983; amd. Sec. 1, Ch. 232, L. 1985; amd. Sec. 1, Ch. 547, L. 1987; amd. Sec. 9, Ch. 222, L. 1993; amd. Sec. 2, Ch. 389, L. 1995.

Cross-References

Mobile home defined for tax purposes, 15-1-101.

70-24-423. Waiver of landlord's right to terminate for breach. Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent. Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right. The acceptance of partial payment of rent due does not constitute a waiver of any right.

History: En. 42-436 by Sec. 36, Ch. 313, L. 1977; R.C.M. 1947, 42-436; amd. Sec. 1, Ch. 132, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 132 near beginning of first sentence, after "rent due", substituted "is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent" for "with knowledge of a tenant's default or acceptance by the landlord of a tenant's performance that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach unless otherwise agreed after the breach has occurred"; and inserted second sentence related to nonwaiver of rights by acceptance of rent when claimed breach is not for nonpayment of rent.

70-24-424. Refusal of access — landlord's remedies. (1) If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by 70-24-312(5), the landlord may either obtain injunctive relief or terminate the rental agreement.

History: En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(1); amd. Sec. 10, Ch. 222, L. 1993.

70-24-425. Failure of tenant to maintain dwelling — landlord's right to enter and repair. If there is noncompliance by the tenant with 70-24-321 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

History: En. 42-434 by Sec. 34, Ch. 313, L. 1977; R.C.M. 1947, 42-434.

70-24-426. Remedies for absence or abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 70-24-322, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be.

History: En. 42-435 by Sec. 35, Ch. 313, L. 1977; R.C.M. 1947, 42-435.

70-24-427. Landlord's remedies after termination — action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons. If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing.

History: En. 42-438 by Sec. 38, Ch. 313, L. 1977; R.C.M. 1947, 42-438; amd. Sec. 1, Ch. 585, L. 1993.

70-24-428. Landlord's recovery of possession limited. Except in the case of abandonment, surrender, or as permitted in this chapter, a landlord may not recover or take possession of the dwelling unit by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services.

History: En. 42-439 by Sec. 39, Ch. 313, L. 1977; R.C.M. 1947, 42-439.

70-24-429. Holdover remedies — consent to continued occupancy — tenant's response to service in action for possession. (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) In an action for possession or unlawful holdover, the provisions of Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 10 days after service of summons and complaint, exclusive of the date of service.

(3) If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e) applies.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(3); amd. Sec. 1, Ch. 176, L. 1993.

70-24-430. Disposition of personal property abandoned by tenant after termination. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for actual damages.

(7) A public or private sale authorized by this section must be conducted under the provisions of 30-9-504(3) or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes.

History: En. 42-437 by Sec. 37, Ch. 313, L. 1977; R.C.M. 1947, 42-437; amd. Sec. 1, Ch. 483, L. 1985; amd. Sec. 3, Ch. 401, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 401 in (2), in second sentence after "charge a reasonable storage", inserted "and labor"; in (5), near middle of first sentence, substituted "7 days" for "15 days"; in (6), near end, substituted "actual damages" for "double damages"; in (8), after "costs of notice, storage", inserted "labor"; and made minor changes in style.

70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union, mobile home park tenant association, or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against him for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(4) Notwithstanding subsections (1), (2), and (3) of this section, a landlord may bring an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or other persons on the premises with his consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2).

History: En. 42-442 by Sec. 42, Ch. 313, L. 1977; R.C.M. 1947, 42-442; amd. Sec. 6, Ch. 487, L. 1993.

70-24-432 through 70-24-435 reserved.

70-24-436. Mobile home parks — grounds for termination of rental agreement. (1) A landlord of a mobile home park may terminate a rental agreement only by following the procedure set forth in 70-24-422, except as specifically provided in this section, and only for one or more of the following reasons:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement;

(b) late payment of rent, late charges, or common area maintenance fees as established in the rental agreement three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by 70-24-422. For this subsection (1)(b), the notice period referred to in 70-24-422(1) is 30 days.

(c) violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park if the violation has not been remedied 24 hours after the violator is given written notice of the violation;

(d) two or more violations within a 12-month period of any combination of one or more mobile home park rules, the violation of which would have a significant adverse impact on the mobile home park or its residents and that are so designated;

(e) two or more violations within a 12-month period of the same rule. For this subsection (1)(e), the notice period referred to in 70-24-422(1) is 30 days.

(f) two or more violations of 70-24-321(1) within a 12-month period or any violation of 70-24-321(2);

(g) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises. For this subsection (1)(g), the notice period referred to in 70-24-422(1) is 30 days.

(h) endangers other residents or mobile home park personnel or causes substantial damage to the mobile home park premises;

(i) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park, or the landlord's documentation of a violation of the provisions of Title 45, chapter 9;

(j) changes in the use of the land if the requirements of subsection (2) are met. For this subsection (1)(j), the notice period referred to in 70-24-422(1) is 180 days.

(k) a legitimate business reason, provided that the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the land composing the mobile home park from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the mobile home park.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice, the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner and tenant of the mobile home owner written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(b), only one notice for each violation per month may be included in the calculation.

History: En. Sec. 2, Ch. 470, L. 1993; amd. Sec. 3, Ch. 389, L. 1995; amd. Sec. 4, Ch. 401, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 401 in (1)(e), near end, substituted "30 days" for "60 days"; and made minor changes in style.

Cross-References

Landlord defined, 70-24-103.

Mobile home park defined, 70-24-103.

70-24-437 through 70-24-440 reserved.

70-24-441. Termination by landlord or tenant. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(1), (2).

70-24-442. Attorney fees — costs. (1) In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

(2) As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

History: En. 42-417 by Sec. 17, Ch. 313, L. 1977; R.C.M. 1947, 42-417.

Cross-References

Civil procedure — costs, Title 25, ch. 10.

CHAPTER 25

RESIDENTIAL TENANTS' SECURITY DEPOSITS

Part 1 — General Provisions

70-25-101. Definitions.
70-25-102. Application of chapter.
70-25-103. Waivers and contrary provisions invalid.

Part 2 — Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom.
70-25-202. List of damages and refund — delivery to departing tenant.
70-25-203. Failure to provide list — forfeiture of deduction rights.
70-25-204. Wrongful withholding of security deposit — action.
70-25-205. Failure of departing tenant to furnish new address.
70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.

Part 1

General Provisions

70-25-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or his selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit. A fee or charge for cleaning and damages, no matter how designated, is presumed to be a security deposit.

History: En. 42-301 by Sec. 1, Ch. 219, L. 1974; amd. Sec. 1, Ch. 297, L. 1977; R.C.M. 1947, 42-301; amd. Sec. 1, Ch. 505, L. 1991.

70-25-102. Application of chapter. This chapter applies to all rentals of dwellings, including mobile homes but excluding property of public housing authorities.

History: **En. 42-302 by Sec. 2, Ch. 219, L. 1974; R.C.M. 1947, 42-302.**

70-25-103. Waivers and contrary provisions invalid. Any provision of a leasehold agreement, either oral or written, that is contrary to this chapter is invalid. Any attempted waiver of this chapter by the tenant is invalid.

History: **En. 42-309 by Sec. 9, Ch. 219, L. 1974; R.C.M. 1947, 42-309; amd. Sec. 13, Ch. 115, L. 1979.**

Part 2
Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom. (1) A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent, late charges, utilities, penalties due under lease provisions, and other money owing to the landlord at the time of deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses, including a reasonable charge for the landlord's labor.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time that the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, cleaning charges may not be deducted until written notice has been given to the tenant. The notice must include the cleaning not accomplished by the tenant and the additional and type or types of cleaning that need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 24 hours to complete the required cleaning. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit.

(4) A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section.

History: **En. 42-303 by Sec. 3, Ch. 219, L. 1974; amd. Sec. 2, Ch. 297, L. 1977; R.C.M. 1947, 42-303; amd. Sec. 14, Ch. 115, L. 1979; amd. Sec. 2, Ch. 505, L. 1991; amd. Sec. 1, Ch. 342, L. 1993; amd. Sec. 4, Ch. 389, L. 1995; amd. Sec. 5, Ch. 401, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 401 in (1), at end, inserted "including a reasonable charge for the landlord's labor"; and made minor changes in style.

70-25-202. List of damages and refund — delivery to departing tenant. (1) Every landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, to the leasehold premises that the landlord alleges are the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery shall be accomplished by mailing the list and refund to the tenant's last-known address or the new address provided by the tenant.

(2) If after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days.

History: **En. 42-304 by Sec. 4, Ch. 219, L. 1974; amd. Sec. 3, Ch. 297, L. 1977; R.C.M. 1947, 42-304; amd. Sec. 3, Ch. 505, L. 1991.**

70-25-203. Failure to provide list — forfeiture of deduction rights. Any landlord who fails to provide the departing tenant with a written list of damage and cleaning charges as required by 70-25-202 shall forfeit all rights to withhold any portion of the security deposit for the damages or cleaning charges.

History: **En. 42-305 by Sec. 5, Ch. 219, L. 1974; amd. Sec. 4, Ch. 297, L. 1977; R.C.M. 1947, 42-305.**

70-25-204. Wrongful withholding of security deposit — action. (1) A person who wrongfully withholds a residential property security deposit or any portion of the deposit is liable in damages to the tenant in a civil action for an amount equal to the sum determined to have been wrongfully withheld or deducted. The attorney fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises is on the landlord.

(2) An action may not be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or the landlord's agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy;

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises; or

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the premises, no cleaning was required, no rent was unpaid, and no utilities were unpaid by the tenant.

History: **En. 42-306 by Sec. 6, Ch. 219, L. 1974; R.C.M. 1947, 42-306; amd. Sec. 4, Ch. 505, L. 1991; amd. Sec. 2, Ch. 342, L. 1993.**

70-25-205. Failure of departing tenant to furnish new address. Failure by the departing tenant to provide the landlord with a new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, relieves the landlord from liability as imposed by 70-25-204. The failure may not, however, bar the tenant from recovering the actual amount owing to the tenant by the landlord.

History: **En. 42-307 by Sec. 7, Ch. 219, L. 1974; R.C.M. 1947, 42-307; amd. Sec. 3, Ch. 342, L. 1993.**

70-25-206. Landlord to furnish statement of condition of premises at beginning of lease. (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each tenant, in conjunction with execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let. At the written request of the tenant, a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question must be provided to the tenant.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or the landlord's agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating the fact; and

(c) the signature of the landlord or the landlord's agent.

(3) A person engaged in the rental of property for residential purposes who fails to furnish a tenant, in conjunction with the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, upon the written request of the tenant, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement is barred from recovering any sum for damage to or cleaning of the leasehold premises unless the person can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees.

History: En. 42-308 by Sec. 8, Ch. 219, L. 1974; amd. Sec. 5, Ch. 297, L. 1977; R.C.M. 1947, 42-308; amd. Sec. 5, Ch. 505, L. 1991; amd. Sec. 4, Ch. 342, L. 1993.

CHAPTER 26

LANDLORD AND TENANT RESIDENTIAL AND COMMERCIAL

Part 1 — Residential and Commercial

70-26-101. Letting of parts of rooms prohibited.
70-26-102. Transferee of rental property to have same rights as transferor.
70-26-103. Attornment of tenant to stranger void.
70-26-104. Notice of action by third person served on tenant — duty to inform landlord.
70-26-105. Assignee of lessee — remedies of lessor against.
70-26-106. Rights of lessee and his assignees against lessor and his assignees.
70-26-107. Remedy for rent on lease for life.
70-26-108. Rent dependent on life — recovery.
70-26-109. Change of lease terms by notice.
70-26-110. Lease of city lot for over 75 years void.

Part 2 — Commercial

70-26-201. Term of lease when none specified.
70-26-202. Rent — when payable.
70-26-203. Failure of lessor to repair — lessee's remedies.
70-26-204. Renewal of lease by lessee's continued possession.
70-26-205. Notice required to terminate lease.
70-26-206. Rights of tenant for years or at will.
70-26-207. Repealed.

Part 1
Residential and Commercial

70-26-101. Letting of parts of rooms prohibited. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary, and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building under the same landlord is relieved from all obligation to pay rent to him while such double letting of any room continues.

History: En. Sec. 2629, Civ. C. 1895; re-en. Sec. 5235, Rev. C. 1907; re-en. Sec. 7750, R.C.M. 1921; Cal. Civ. C. Sec. 1950; Based on Field Civ. C. Sec. 998; re-en. Sec. 7750, R.C.M. 1935; R.C.M. 1947, 42-210.

70-26-102. Transferee of rental property to have same rights as transferor. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease, or of any waste or cause of forfeiture as his grantor or devisor might have had.

History: En. Sec. 1273, Civ. C. 1895; re-en. Sec. 4521, Rev. C. 1907; re-en. Sec. 6763, R.C.M. 1921; Cal. Civ. C. Sec. 821; Field Civ. C. Sec. 260; re-en. Sec. 6763, R.C.M. 1935; R.C.M. 1947, 67-704.

70-26-103. Attornment of tenant to stranger void. The attornment of a tenant to a stranger is void unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

History: En. Sec. 48, p. 487, Bannack Stat.; re-en. Sec. 48, p. 403, Cod. Stat. 1871; re-en. Sec. 225, 5th Div. Rev. Stat. 1879; re-en. Sec. 283, 5th Div. Comp. Stat. 1887; re-en. Sec. 2627, Civ. C. 1895; re-en. Sec. 5233, Rev. C. 1907; re-en. Sec. 7748, R.C.M. 1921; Cal. Civ. C. Sec. 1948; re-en. Sec. 7748, R.C.M. 1935; R.C.M. 1947, 42-208.

Cross-References

Relation of landlord and tenant as affecting adverse possession, 70-19-412.

70-26-104. Notice of action by third person served on tenant — duty to inform landlord. Every tenant who receives notice of any proceeding to recover the real property occupied by him or the possession thereof must immediately inform his landlord of the same and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice or to deliver it to him if in writing.

History: En. Sec. 2628, Civ. C. 1895; re-en. Sec. 5234, Rev. C. 1907; re-en. Sec. 7749, R.C.M. 1921; Cal. Civ. C. Sec. 1949; Based on Field Civ. C. Sec. 997; re-en. Sec. 7749, R.C.M. 1935; R.C.M. 1947, 42-209.

70-26-105. Assignee of lessee — remedies of lessor against. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

History: En. Sec. 1274, Civ. C. 1895; re-en. Sec. 4522, Rev. C. 1907; re-en. Sec. 6764, R.C.M. 1921; Cal. Civ. C. Sec. 822; Based on Field Civ. C. Sec. 261; re-en. Sec. 6764, R.C.M. 1935; R.C.M. 1947, 67-705.

70-26-106. Rights of lessee and his assignees against lessor and his assignees. Whatever remedies the lessee of any real property may have against his immediate lessor for the breach of any agreement in the lease, he may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

History: En. Sec. 1275, Civ. C. 1895; re-en. Sec. 4523, Rev. C. 1907; re-en. Sec. 6765, R.C.M. 1921; Cal. Civ. C. Sec. 823; re-en. Sec. 6765, R.C.M. 1935; R.C.M. 1947, 67-706.

70-26-107. Remedy for rent on lease for life. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

History: En. Sec. 1276, Civ. C. 1895; re-en. Sec. 4524, Rev. C. 1907; re-en. Sec. 6766, R.C.M. 1921; Cal. Civ. C. Sec. 824; Field Civ. C. Sec. 263; re-en. Sec. 6766, R.C.M. 1935; R.C.M. 1947, 67-707.

70-26-108. Rent dependent on life — recovery. Rent dependent on the life of a person may be recovered after as well as before his death.

History: En. Sec. 1277, Civ. C. 1895; re-en. Sec. 4525, Rev. C. 1907; re-en. Sec. 6767, R.C.M. 1921; Cal. Civ. C. Sec. 825; Field Civ. C. Sec. 264; re-en. Sec. 6767, R.C.M. 1935; R.C.M. 1947, 67-708.

Cross-References

Probate — creditors' claims, Title 72, ch. 3, part 8.

70-26-109. Change of lease terms by notice. In all leases of lands or tenements or of any interest therein from month to month, the landlord may, upon giving notice in writing at least 15 days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice if the tenant shall continue to hold the premises after the expiration of the month.

History: En. Sec. 1279, Civ. C. 1895; re-en. Sec. 4527, Rev. C. 1907; re-en. Sec. 6769, R.C.M. 1921; Cal. Civ. C. Sec. 827; re-en. Sec. 6769, R.C.M. 1935; R.C.M. 1947, 67-710.

Cross-References

Modification of contracts, Title 28, ch. 2, part 16.

70-26-110. Lease of city lot for over 75 years void. No lease or grant of any town or city lot for a period longer than 75 years, in which shall be reserved any rent or service of any kind, shall be valid.

History: En. Sec. 1153, Civ. C. 1895; re-en. Sec. 4466, Rev. C. 1907; re-en. Sec. 6708, R.C.M. 1921; Cal. Civ. C. Sec. 718; amd. Sec. 1, Ch. 147, L. 1929; re-en. Sec. 6708, R.C.M. 1935; R.C.M. 1947, 67-409.

Cross-References

Leases for more than 1 year to be in writing, 28-2-903.

Part 2
Commercial

70-26-201. Term of lease when none specified. A hiring of real property, other than lodgings and dwelling houses, in places where there is no usage on the subject, is presumed to be for 1 year from its commencement unless otherwise expressed in the hiring.

History: En. Sec. 2622, Civ. C. 1895; re-en. Sec. 5228, Rev. C. 1907; re-en. Sec. 7743, R.C.M. 1921; Cal. Civ. C. Sec. 1943; re-en. Sec. 7743, R.C.M. 1935; R.C.M. 1947, 42-203.

Cross-References

Leases for more than 1 year to be in writing, 28-2-903.

Leases on town or city lots for over 75 years void, 70-26-110.

70-26-202. Rent — when payable. When there is no usage or contract to the contrary, rents for real property under an arrangement not governed by chapter 24 of this title are payable at the termination of the holding if it does not exceed 1 year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

History: En. Sec. 2626, Civ. C. 1895; re-en. Sec. 5232, Rev. C. 1907; re-en. Sec. 7747, R.C.M. 1921; Cal. Civ. C. Sec. 1947; re-en. Sec. 7747, R.C.M. 1935; R.C.M. 1947, 42-207; amd. Sec. 15, Ch. 115, L. 1979.

70-26-203. Failure of lessor to repair — lessee's remedies. (1) If within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, and if the cost of such repairs does not require an expenditure greater than 1 month's rent of the premises, the lessee may perform such repairs himself and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he is discharged from further payment of rent or performance of other conditions.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by chapter 24 of this title.

History: En. Sec. 2621, Civ. C. 1895; re-en. Sec. 5227, Rev. C. 1907; re-en. Sec. 7742, R.C.M. 1921; Cal. Civ. C. Sec. 1942; Based on Field Civ. C. Sec. 991; re-en. Sec. 7742, R.C.M. 1935; R.C.M. 1947, 42-202; amd. Sec. 16, Ch. 115, L. 1979.

70-26-204. Renewal of lease by lessee's continued possession. If a lessee of real property leased under an arrangement not governed by chapter 24 of this title remains in possession thereof after the expiration of the hiring and the lessor accepts a rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding 1 month when the rent is payable monthly, or in any case 1 year.

History: En. Sec. 2624, Civ. C. 1895; re-en. Sec. 5230, Rev. C. 1907; re-en. Sec. 7745, R.C.M. 1921; Cal. Civ. C. Sec. 1945; Based on Field Civ. C. Sec. 994; re-en. Sec. 7745, R.C.M. 1935; R.C.M. 1947, 42-205; amd. Sec. 17, Ch. 115, L. 1979.

70-26-205. Notice required to terminate lease. (1) A hiring of real property for a term not specified by the parties is presumed to be renewed as stated in 70-26-204 at the end of the term implied by law unless one of the parties gives notice to the other of his intention to terminate the hiring at least as long before the expiration thereof as the term of the hiring itself, not exceeding 1 month.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by chapter 24 of this title.

History: En. Sec. 2625, Civ. C. 1895; re-en. Sec. 5231, Rev. C. 1907; re-en. Sec. 7746, R.C.M. 1921; Cal. Civ. C. Sec. 1946; Based on Field Civ. C. Sec. 995; re-en. Sec. 7746, R.C.M. 1935; R.C.M. 1947, 42-206; amd. Sec. 18, Ch. 115, L. 1979.

Cross-References

Tenancy at will — termination by notice, 70-27-104.

Holdover or collusion after notice — treble rent, 70-27-207.

Holdover after tenant's notice to quit — treble rent, 70-27-208.

70-26-206. Rights of tenant for years or at will. (1) A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of his tenancy; and a tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of his tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to him by the agreement or instrument by which his tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by chapter 24 of this title.

History: (1)En. Sec. 1271, Civ. C. 1895; re-en. Sec. 4519, Rev. C. 1907; re-en. Sec. 6761, R.C.M. 1921; Cal. Civ. C. Sec. 819; Based on Field Civ. C. Sec. 258; re-en. Sec. 6761, R.C.M. 1935; Sec. 67-702, R.C.M. 1947; (2)En. Sec. 1272, Civ. C. 1895; re-en. Sec. 4520, Rev. C. 1907; re-en. Sec. 6762, R.C.M. 1921; Cal. Civ. C. Sec. 820; Field Civ. C. Sec. 259; re-en. Sec. 6762, R.C.M. 1935; Sec. 67-703, R.C.M. 1947; R.C.M. 1947, 67-702, 67-703; (3)En. Sec. 19, Ch. 115, L. 1979.

70-26-207. Repealed. Sec. 1, Ch. 11, L. 1985.

History: En. Sec. 1152, Civ. C. 1895; re-en. Sec. 4465, Rev. C. 1907; amd. Sec. 1, Ch. 172, L. 1919; re-en. Sec. 6707, R.C.M. 1921; Cal. Civ. C. Sec. 717; re-en. Sec. 6707, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1941; R.C.M. 1947, 67-408.

CHAPTER 27

FORCIBLE ENTRY AND DETAINER UNLAWFUL DETAINER

Part 1 — Definitions and Preliminary Procedure

70-27-101. Application and jurisdiction.
70-27-102. Forcible entry defined.
70-27-103. Forcible detainer defined.
70-27-104. Tenancy at will — termination by notice.
70-27-105. Remedies of landlord after notice.
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Part 1

Definitions and Preliminary Procedure

70-27-101. Application and jurisdiction. (1) This chapter, except as it relates to forcible detainer as defined in 70-27-103(2) only and as it relates to forcible entry, does not apply to arrangements governed by chapter 24 of this title.

(2) The district court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter, provided that justices' courts, within their respective counties, shall have concurrent jurisdiction.

History: En. Sec. 2084, C. Civ. Proc. 1895; re-en. Sec. 7273, Rev. C. 1907; re-en. Sec. 9891, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1163; re-en. Sec. 9891, R.C.M. 1935; amd. Sec. 26, Ch. 491, L. 1973; R.C.M. 1947, 93-9705; amd. Sec. 3, Ch. 417, L. 1979.

70-27-102. Forcible entry defined. Every person is guilty of a forcible entry who either:

(1) by breaking open doors, windows, or other parts of a house or by any kind of violence or circumstance of terror enters upon or into any real property or mining claim; or

(2) after entering peaceably upon real property or mining claim, turns out by force, threats, or menacing conduct the party in possession.

History: En. Sec. 2080, C. Civ. Proc. 1895; re-en. Sec. 7269, Rev. C. 1907; re-en. Sec. 9887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1159; re-en. Sec. 9887, R.C.M. 1935; R.C.M. 1947, 93-9701.

70-27-103. Forcible detainer defined. Every person is guilty of a forcible detainer who either:

(1) by force or by menaces and threats of violence unlawfully holds and keeps the possession of any real property or mining claim, whether the same was acquired peaceably or otherwise; or

(2) in the nighttime or during the absence of the occupant of any lands or mining claim unlawfully enters upon real property and, after demand made for the surrender thereof, for the period of 5 days refuses to surrender the same to such former occupant. The occupant of real property or mining claim, within the meaning of this subsection, is one who, within 5 days preceding such unlawful entry, was in the peaceable and undisputed possession of such lands.

History: En. Sec. 2081, C. Civ. Proc. 1895; re-en. Sec. 7270, Rev. C. 1907; re-en. Sec. 9888, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1160; re-en. Sec. 9888, R.C.M. 1935; R.C.M. 1947, 93-9702.

70-27-104. Tenancy at will — termination by notice. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed in this chapter, to remove from the premises within a period of not less than 1 month, to be specified in the notice; but none of the estates or tenancies embraced by the provisions of 70-15-202(4) is a tenancy or estate at will.

History: En. Sec. 1240, Civ. C. 1895; re-en. Sec. 4502, Rev. C. 1907; re-en. Sec. 6744, R.C.M. 1921; Cal. Civ. C. Sec. 789; Based on Field Civ. C. Sec. 240; amd. Sec. 1, Ch. 50, L. 1931; re-en. Sec. 6744, R.C.M. 1935; R.C.M. 1947, 67-523.

70-27-105. Remedies of landlord after notice. After such notice has been served and the period specified by such notice has expired, but not before, the landlord may reenter or proceed according to law to recover possession.

History: En. Sec. 1241, Civ. C. 1895; re-en. Sec. 4503, Rev. C. 1907; re-en. Sec. 6745, R.C.M. 1921; Cal. Civ. C. Sec. 790; Based on Field Civ. C. Sec. 242; re-en. Sec. 6745, R.C.M. 1935; R.C.M. 1947, 67-524.

70-27-106. Reentry — when and how to be made. Whenever the right of reentry is given to the grantor or lessor in any grant or lease or otherwise, such reentry may be made at any time after the right has accrued, upon 3 days' notice, as provided in this chapter.

History: En. Sec. 1242, Civ. C. 1895; re-en. Sec. 4504, Rev. C. 1907; re-en. Sec. 6746, R.C.M. 1921; Cal. Civ. C. Sec. 791; Based on Field Civ. C. Sec. 243; re-en. Sec. 6746, R.C.M. 1935; R.C.M. 1947, 67-525.

70-27-107. Action for possession under right of reentry — notice not required. An action for the possession of real property leased or granted with a right of reentry may be maintained at any time in the district court, after the right to reenter has accrued, without the notice prescribed in 70-27-106.

History: En. Sec. 1244, Civ. C. 1895; re-en. Sec. 4506, Rev. C. 1907; re-en. Sec. 6748, R.C.M. 1921; Cal. Civ. C. Sec. 793; Field Civ. C. Sec. 244; re-en. Sec. 6748, R.C.M. 1935; R.C.M. 1947, 67-527.

70-27-108. Unlawful detainer defined. A tenant of real property or mining claim, for a term less than life, is guilty of unlawful detainer:

(1) when he continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him without the permission of the landlord or the successor in estate of his landlord, if any there be, but in case of a tenancy at will, it must first be terminated by notice, as prescribed in 70-27-104;

(2) where he continues in possession, in person or by subtenant, without permission of his landlord or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and 3 days' notice in writing requiring its payment, stating the amount which is due, or possession of the property shall have been served upon him and, if there be a subtenant in actual occupation of the premises, also upon such subtenant. Such notice may be served at any time within 1 year after the rent becomes due. In all cases of tenancy upon agricultural lands where the tenant has held over and retained possession for more than 60 days after the expiration of his term without any demand of

possession or notice to quit by the landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord or the successor in estate of his landlord and shall be entitled to hold under the terms of the lease for another full year and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year;

(3) when he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and 3 days' notice in writing, requiring the performance of such conditions or covenants or the possession of the property, shall have been served upon him and, if there be a subtenant in actual occupation of the premises, also upon such subtenant. Within 3 days after the serving of the notice, the tenant or any subtenant in actual occupation of the premises or any mortgagee of the term or other person interested in its continuance may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture. If the covenants and conditions of the lease violated by the lessee cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of his unlawful detention of the premises underlet to him. Any tenant or subtenant assigning or subletting or committing waste upon the demised premises contrary to the covenants of his lease thereby terminates the lease, and the landlord or his successor in estate shall, upon service of 3 days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this chapter.

History: En. Sec. 658, p. 174, Bannack Stat.; re-en. Sec. 647, p. 165, Cod. Stat. 1871; re-en. Sec. 707, 1st Div. Rev. Stat. 1879; re-en. Sec. 727, 1st Div. Comp. Stat. 1887; en. Sec. 2082, C. Civ. Proc. 1895; re-en. Sec. 7271, Rev. C. 1907; re-en. Sec. 9889, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1161; re-en. Sec. 9889, R.C.M. 1935; R.C.M. 1947, 93-9703.

Cross-References

Nonapplicability of unlawful detainer to residential arrangements, 70-27-101.

70-27-109. General rules of practice applicable. Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice mentioned in this chapter.

History: En. Sec. 2097, C. Civ. Proc. 1895; re-en. Sec. 7286, Rev. C. 1907; re-en. Sec. 9904, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1177; re-en. Sec. 9904, R.C.M. 1935; R.C.M. 1947, 93-9718; amd. Sec. 20, Ch. 115, L. 1979.

Cross-References

Montana Rules of Civil Procedure incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

70-27-110. Service of notice — how made. (1) The notices required by 70-27-108 may be served, either:

(a) by delivering a copy to the tenant personally;

(b) if he be absent from his place of residence and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy through the mail addressed to the tenant at his place of residence; or

(c) if such place of residence and business cannot be ascertained or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property and also delivering a copy to a person there residing if such person can be found and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

(2) Service upon a subtenant may be made in the same manner.

History: **En. Sec. 2083, C. Civ. Proc. 1895; re-en. Sec. 7272, Rev. C. 1907; re-en. Sec. 9890, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1162; re-en. Sec. 9890, R.C.M. 1935; R.C.M. 1947, 93-9704.**

Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

70-27-111. Parties defendant. (1) No person other than the tenant of the premises and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed need be made parties defendant in the proceeding, nor shall any proceeding abate or the plaintiff be nonsuited for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against such party.

(2) In case a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by 70-27-108(2) upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action.

(3) In case a married person is a tenant or subtenant, failure to join such person's spouse shall constitute no defense; but in case the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant can only be enforced against property on the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by his spouse.

(4) All persons who enter the premises under the tenant after the commencement of the action shall be bound by the judgment the same as if he or they had been made party to the action.

History: **En. Sec. 2085, C. Civ. Proc. 1895; re-en. Sec. 7274, Rev. C. 1907; re-en. Sec. 9892, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1164; re-en. Sec. 9892, R.C.M. 1935; amd. Sec. 58, Ch. 535, L. 1975; R.C.M. 1947, 93-9706.**

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

70-27-112. Applicability of general provisions on parties. Except as provided in 70-27-111, the provisions of Title 25 relating to parties to civil actions are applicable to this proceeding.

History: **En. Sec. 2086, C. Civ. Proc. 1895; re-en. Sec. 7275, Rev. C. 1907; re-en. Sec. 9893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1165; re-en. Sec. 9893, R.C.M. 1935; R.C.M. 1947, 93-9707.**

70-27-113. Complaint and summons. (1) The plaintiff, in his complaint, which must be in writing, must set forth the facts on which he seeks to recover and describe the premises with reasonable certainty and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry or forcible or unlawful detainer and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent.

(2) Upon filing the complaint, a summons must be issued thereon as in other cases, returnable at a date designated therein, which shall not be less than 4 days or more than 12 days from its date.

History: **En. Sec. 2087, C. Civ. Proc. 1895; re-en. Sec. 7276, Rev. C. 1907; re-en. Sec. 9894, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1166; re-en. Sec. 9894, R.C.M. 1935; R.C.M. 1947, 93-9708(part).**

70-27-114. Summons — contents — service. (1) The summons must:

(a) state the parties to the proceeding, the court in which the same is brought, the nature of the action in concise terms, and the relief sought and also the return day; and

(b) notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him.

(2) The summons must be directed to the defendant and be served at least 4 days before the return day designated therein and must be served and returned in the same manner as summons in civil actions is served and returned.

(3) The summons must be served personally upon the defendants if the defendants can be found with due diligence within the state or if the defendants cannot be found with due diligence within the state, the summons must be served in the same manner as notices are required to be served in 70-27-110. The complaint need not be served.

(4) Upon the return of any summons issued under this chapter, where the same has not for any reason been served or not served in time, the plaintiff may have a new summons issued, the same as if no previous summons had been issued.

History: **En. Secs. 2087, 2088, C. Civ. Proc. 1895; re-en. Secs. 7276, 7277, Rev. C. 1907; re-en. Secs. 9894, 9895, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1166, 1167; re-en. Secs. 9894, 9895, R.C.M. 1935; R.C.M. 1947, 93-9708(part), 93-9709; amd. Sec. 1, Ch. 303, L. 1979.**

70-27-115. Defendant's appearance and answer. On or before the day fixed for the defendant's appearance, the defendant may appear and answer or move to dismiss the complaint for failure to state a claim. In any case, the defendant shall answer the complaint and summons within 10 days.

History: **En. Sec. 2090, C. Civ. Proc. 1895; re-en. Sec. 7279, Rev. C. 1907; re-en. Sec. 9897, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1170; re-en. Sec. 9897, R.C.M. 1935; R.C.M. 1947, 93-9711; amd. Sec. 21, Ch. 115, L. 1979; amd. Sec. 1, Ch. 138, L. 1993.**

70-27-116. Verification of complaint and answer. The complaint and answer must be verified. If new matter be set up in the answer, it is deemed denied.

History: **En. Sec. 2095, C. Civ. Proc. 1895; re-en. Sec. 7284, Rev. C. 1907; re-en. Sec. 9902, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1175; re-en. Sec. 9902, R.C.M. 1935; R.C.M. 1947, 93-9716.**

70-27-117. Judgment by default. If at the time appointed the defendant does not appear and defend, the court must enter his default and enter judgment in favor of the plaintiff as prayed for in the complaint.

History: En. Sec. 2089, C. Civ. Proc. 1895; re-en. Sec. 7278, Rev. C. 1907; re-en. Sec. 9896, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1169; re-en. Sec. 9896, R.C.M. 1935; R.C.M. 1947, 93-9710.

Part 2

Trial, Judgment, and Appeal

70-27-201. Trial by jury. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

History: En. Sec. 2091, C. Civ. Proc. 1895; re-en. Sec. 7280, Rev. C. 1907; re-en. Sec. 9898, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1171; re-en. Sec. 9898, R.C.M. 1935; R.C.M. 1947, 93-9712.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Juries and jurors, Title 3, ch. 15.

70-27-202. Actions in justice's court to be tried within 10 days. (1) Actions filed in justice's court under this chapter shall be tried within 10 days after the appearance or answer date stated in the summons unless the defendant applying for a continuance shall give an undertaking to the adverse party with good and sufficient security to be approved by the court, conditioned for the payment of all damages and rent that may accrue if judgment be rendered against the defendant.

(2) The plaintiff and defendant may stipulate to a continuance of the trial beyond the limit of this section without the necessity of an undertaking.

History: En. 93-9712.1 by Sec. 1, Ch. 166, L. 1977; R.C.M. 1947, 93-9712.1.

Cross-References

Jurisdiction of Justices' Courts, Title 3, ch. 10, part 3.

70-27-203. Showings required on trial. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors or those whose interest in such premises he claims have been in the quiet possession thereof for the space of 1 whole year together next before the commencement of the proceedings and that his interest therein is not then ended or determined, and such showing is a bar to the proceedings.

History: En. Sec. 654, p. 173, Bannack Stat.; re-en. Sec. 643, p. 164, Cod. Stat. 1871; re-en. Sec. 703, 1st Div. Rev. Stat. 1879; re-en. Sec. 723, 1st Div. Comp. Stat. 1887; amd. Sec. 2092, C. Civ. Proc. 1895; re-en. Sec. 7281, Rev. C. 1907; re-en. Sec. 9899, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1172; re-en. Sec. 9899, R.C.M. 1935; R.C.M. 1947, 93-9713.

70-27-204. Amendment of complaint after trial begins. (1) When, upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either forcible entry or forcible or unlawful detainer and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform with such proof. Such amendment must be made without any imposition of terms.

(2) No continuance shall be permitted on account of such amendment unless the defendant by affidavit filed shows to the satisfaction of the court good cause therefor.

History: En. Sec. 2093, C. Civ. Proc. 1895; re-en. Sec. 7282, Rev. C. 1907; re-en. Sec. 9900, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1173; re-en. Sec. 9900, R.C.M. 1935; R.C.M. 1947, 93-9714.

70-27-205. Verdict, judgment, and execution. (1) If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

(2) The jury, or the court if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry or by any forcible or unlawful detainer alleged in the complaint and proved on the trial and find the amount of any rent due if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant, guilty of the forcible entry or forcible or unlawful detainer, for three times the amount of the damages thus assessed and of the rent found due.

(3) When the proceeding is for an unlawful detainer after default in the payment of the rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant or any subtenant or any mortgagee of the term or other party interested in its continuance may pay into court for the landlord the amount found due as rent with interest thereon and the amount of damages found by the jury or the court for the unlawful detainer and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but if payment, as here provided, be not made within the 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

History: En. Sec. 2094, C. Civ. Proc. 1895; re-en. Sec. 7283, Rev. C. 1907; re-en. Sec. 9901, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1174; re-en. Sec. 9901, R.C.M. 1935; R.C.M. 1947, 93-9715.

70-27-206. Treble damages. If a person recovers damages for a forcible or unlawful entry in or upon or detention of any building or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

History: En. Sec. 232, p. 91, Bannack Stat.; re-en. Sec. 253, p. 187, L. 1867; re-en. Sec. 302, p. 93, Cod. Stat. 1871; re-en. Sec. 353, L. 1877; re-en. Sec. 353, 1st Div. Rev. Stat. 1879; re-en. Sec. 365, 1st Div. Comp. Stat. 1887; re-en. Sec. 1304, C. Civ. Proc. 1895; re-en. Sec. 6869, Rev. C. 1907; re-en. Sec. 9478, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 735; re-en. Sec. 9478, R.C.M. 1935; R.C.M. 1947, 93-6105.

70-27-207. Holdover or collusion after notice — treble rent. If any tenant or any person in collusion with the tenant holds over any lands or tenements after demand made and 1 month's notice in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

History: **En. Sec. 4351, Civ. C. 1895; re-en. Sec. 6077, Rev. C. 1907; re-en. Sec. 8695, R.C.M. 1921; Cal. Civ. C. Sec. 3345; re-en. Sec. 8695, R.C.M. 1935; R.C.M. 1947; 17-502.**

70-27-208. Holdover after tenant's notice to quit — treble rent. If any tenant gives notice of his intention to quit the premises and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

History: **En. Sec. 4350, Civ. C. 1895; re-en. Sec. 6076, Rev. C. 1907; re-en. Sec. 8694, R.C.M. 1921; Cal. Civ. C. Sec. 3344; re-en. Sec. 8694, R.C.M. 1935; R.C.M. 1947, 17-501.**

70-27-209. Treble rent exclusive of interest. The damages prescribed by 70-27-207 and 70-27-208 are exclusive of exemplary damages and interest.

History: **En. Sec. 4364, Civ. C. 1895; re-en. Sec. 6085, Rev. C. 1907; re-en. Sec. 8703, R.C.M. 1921; Cal. Civ. C. Sec. 3357; Field Civ. C. Sec. 1876; re-en. Sec. 8703, R.C.M. 1935; R.C.M. 1947, 17-605(part).**

70-27-210. Relief against forfeiture of lease in case of hardship. (1) The court may relieve a tenant against a forfeiture of a lease and restore him to his former estate in case of hardship where application for such relief is made within 30 days after the forfeiture is declared by the judgment of the court, as provided in 70-27-205.

(2) The application may be made by a tenant or subtenant or mortgagee of the term or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which relief is sought, and be verified by the applicant.

(3) Notice of the application with a copy of the petition must be served on the plaintiff in the judgment, who may appear and contest the application.

(4) In no case shall the application be granted except on condition that full payment of rent due or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.

History: **En. Sec. 2099, C. Civ. Proc. 1895; re-en. Sec. 7288, Rev. C. 1907; re-en. Sec. 9906, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1179; re-en. Sec. 9906, R.C.M. 1935; R.C.M. 1947, 93-9720.**

70-27-211. Appeal. An appeal may be taken by the plaintiff or defendant as in other cases.

History: **En. Sec. 2096, C. Civ. Proc. 1895; re-en. Sec. 7285, Rev. C. 1907; re-en. Sec. 9903, R.C.M. 1921; re-en. Sec. 9903, R.C.M. 1935; R.C.M. 1947, 93-9717.**

70-27-212. General provisions on new trials and appeals applicable. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

History: **En. Sec. 2098, C. Civ. Proc. 1895; re-en. Sec. 7287, Rev. C. 1907; re-en. Sec. 9905, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1178; re-en. Sec. 9905, R.C.M. 1935; R.C.M. 1947, 93-9719.**

CHAPTER 28

QUIETING TITLE TO REAL PROPERTY

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Part 1
Quieting Title Generally

70-28-101. Quiet title action authorized. An action may be brought and prosecuted to final decree, judgment, or order by any person or persons, whether in actual possession or not, claiming title to real estate against any person or persons, both known and unknown, who claim or may claim any right, title, estate, or interest therein or lien or encumbrance thereon adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, for the purpose of determining such claim or possible claim and quieting the title to said real estate.

History: **En. Sec. 233, p. 92, Bannack Stat.; re-en. Sec. 254, p. 188, L. 1867; re-en. Sec. 303, p. 94, Cod. Stat. 1871; re-en. Sec. 354, p. 138, L. 1877; re-en. Sec. 354, 1st Div. Rev. Stat. 1879; re-en. Sec. 366, 1st Div. Comp. Stat. 1887; amd. Sec. 1310, C. Civ. Proc. 1895; re-en. Sec. 6870, Rev. C. 1907; amd. Sec. 1, Ch. 113, L. 1915; re-en. Sec. 9479, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 738; amd. Sec. 1, Ch. 70, L. 1931; re-en. Sec. 9479, R.C.M. 1935; R.C.M. 1947, 93-6203(part).**

Cross-References

Ownership interests in land sold for taxes
— quiet title, Title 15, ch. 18, part 4.

70-28-102. General procedural provisions applicable. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4, 12(a), and 41(e), M.R.Civ.P., so far as they are not in conflict with this part, are applicable to the action herein provided for.

History: **En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9486, R.C.M. 1921; re-en. Sec. 9486, R.C.M. 1935; R.C.M. 1947, 93-6209; amd. Sec. 22, Ch. 115, L. 1979.**

70-28-103. Venue. All actions brought under 70-28-101 must be brought in the county in which the real estate or a portion thereof, as to which the title is sought to be quieted, is situated; provided that if the real estate is situated in more than one county, said action may be brought and prosecuted in either of said counties, and a transcript of the original judgment certified by the clerk of court shall be filed in the office of the clerk of court in the county other than which the action was brought in which any of the real estate affected thereby is situated.

History: **En. Sec. 233, p. 92, Bannack Stat.; re-en. Sec. 254, p. 188, L. 1867; re-en. Sec. 303, p. 94, Cod. Stat. 1871; re-en. Sec. 354, p. 138, L. 1877; re-en. Sec. 354, 1st Div. Rev. Stat. 1879; re-en. Sec. 366, 1st Div. Comp. Stat. 1887; amd. Sec. 1310, C. Civ. Proc. 1895; re-en. Sec. 6870, Rev. C. 1907; amd. Sec. 1, Ch. 113, L. 1915; re-en. Sec. 9479, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 738; amd. Sec. 1, Ch. 70, L. 1931; re-en. Sec. 9479, R.C.M. 1935; R.C.M. 1947, 93-6203(part).**

70-28-104. Parties defendant — unknown claimants. (1) In any action brought under 70-28-101 and 70-28-103, the plaintiff may join as defendants any or all persons, known or unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title, whether such claim or possible claim be present or contingent, including the person or persons in possession if the plaintiff is not in possession.

(2) If the plaintiff shall desire to obtain a complete adjudication of the title to the real estate described in the complaint, he may name as defendants all known persons who assert or who might assert any claim as in this section above specified and may join as defendants all persons unknown who might make any such claim by adding in the caption of the complaint in such action the words "and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent".

History: **En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9480, R.C.M. 1921; re-en. Sec. 9480, R.C.M. 1935; R.C.M. 1947, 93-6204; amd. Sec. 182, Ch. 575, L. 1981.**

Cross-References

Designating unknown persons as defendants, 25-3-504.

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

70-28-105. Maintenance of action when no known claimants. If in any case there are no known claimants or possible claimants to any of the property involved in any action contemplated by 70-28-101 through 70-28-109, the action may nevertheless be maintained against all persons unknown claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint or any part thereof adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, and such action may be prosecuted to judgment in the same manner and with like effect as though there had been known claimants or possible claimants; and in any such case, the complaint, the affidavit for service by publication, the order for service by publication, and the decree shall state the facts and the summons shall be directed to such unknown persons.

History: En. Sec. 1, Ch. 68, L. 1939; re-en. Sec. 9488.1, R.C.M. 1935; R.C.M. 1947, 93-6212.

70-28-106. Notice of action to be filed with clerk and recorder. Before any order for the publication of summons is granted as provided in Rule 4, M.R.Civ.P., the plaintiff shall file, in the office of the clerk and recorder of each county in which any of the property involved in such action is situated, a notice of the pendency of such action, signed by the plaintiff or his attorney, which notice shall contain:

(1) the title of the court in which such action is filed;

(2) the full caption of the cause;

(3) a complete description of all the property involved in such action; and

(4) a statement of the relief sought by plaintiff.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9481, R.C.M. 1921; re-en. Sec. 9481, R.C.M. 1935; R.C.M. 1947, 93-6205.

70-28-107. Jurisdiction acquired by service — complete adjudication — judgment. (1) Upon the service of summons on all defendants, known and unknown, in the manner provided in Rule 4, M.R.Civ.P., the court in which such action is tried shall have jurisdiction to make a complete adjudication of the title to the lands named in the complaint and the title to which is sought to be quieted, including jurisdiction to direct:

(a) the cancellation of instruments constituting clouds upon such title;

(b) the execution of conveyances where it appears that any party to such action should execute such conveyance or conveyances;

(c) the execution of satisfactions of mortgages and other apparent liens upon such land or any part thereof; or

(d) the doing of any other act of a personal nature necessary to give effect to the rights of the respective parties to such action, as the same may be adjudicated by the court.

(2) When any judgment or decree shall be rendered in such action for a conveyance, release, or acquittance, as above mentioned, and the party or parties against whom the judgment or decree shall be rendered do not comply therewith within the time specified in said judgment or decree for such

compliance, such judgment or decree shall have the same operation and effect and be as available as if the conveyance, release, or acquittance had been executed conformably to such judgment or decree.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9487, R.C.M. 1921; amd. Sec. 2, Ch. 55, L. 1923; re-en. Sec. 9487, R.C.M. 1935; R.C.M. 1947, 93-6210(part).

70-28-108. Prerequisites to decree against defendant not present. Before plaintiff shall be entitled to a decree in such action against any defendant who shall not appear therein, he must produce evidence sufficient to prima facie entitle him to relief, and relief shall be granted only to the extent to which such evidence shall prima facie prove him to be entitled to the same; but this provision shall not affect the procedure in or manner of trial of such actions as between the plaintiff and any defendant who shall appear in such action.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9487, R.C.M. 1921; amd. Sec. 2, Ch. 55, L. 1923; re-en. Sec. 9487, R.C.M. 1935; R.C.M. 1947, 93-6210(part).

70-28-109. Who bound by judgment. Every person made a defendant to such action by name and every unknown claimant or possible claimant upon whom service has been made by publication, in accordance with Rule 4, M.R.Civ.P., and who has not appeared in such action shall be bound by the judgment or decree entered in such action, subject to the right of any such defendants to apply for relief in any manner provided by the statutes applicable to the case of a defaulting defendant served only by publication.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9488, R.C.M. 1921; re-en. Sec. 9488, R.C.M. 1935; R.C.M. 1947, 93-6211.

70-28-110. When value of improvements may be allowed as setoff. When damages are claimed for withholding the property recovered upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claim of plaintiff, in good faith, the value of such improvements must be allowed as setoff against such damage.

History: En. Sec. 236, p. 92, Bannack Stat.; re-en. Sec. 257, p. 188, L. 1867; re-en. Sec. 306, p. 94, Cod. Stat. 1871; re-en. Sec. 357, p. 138, L. 1877; re-en. Sec. 357, 1st Div. Rev. Stat. 1879; re-en. Sec. 369, 1st Div. Comp. Stat. 1887; re-en. Sec. 1313, C. Civ. Proc. 1895; re-en. Sec. 6873, Rev. C. 1907; re-en. Sec. 9491, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 741; re-en. Sec. 9491, R.C.M. 1935; R.C.M. 1947, 93-6215.

70-28-111. Termination of plaintiff's right during action — damages for withholding. In an action for the recovery of real property where the plaintiff shows a right to recover at the time the action was commenced but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact and the plaintiff may recover damages for withholding the property.

History: En. Sec. 235, p. 92, Bannack Stat.; re-en. Sec. 256, p. 188, L. 1867; re-en. Sec. 305, p. 94, Cod. Stat. 1871; re-en. Sec. 356, p. 138, L. 1877; re-en. Sec. 356, 1st Div. Rev. Stat. 1879; re-en. Sec. 368, 1st Div. Comp. Stat. 1887; re-en. Sec. 1312, C. Civ. Proc. 1895; re-en. Sec. 6872, Rev. C. 1907; re-en. Sec. 9490, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 740; re-en. Sec. 9490, R.C.M. 1935; R.C.M. 1947, 93-6214.

70-28-112. Costs. If the defendant in such action disclaim in his answer any interest or estate in the property or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs. But in actions which the plaintiff has brought under section 2326 of the Revised Statutes of the United States to determine an adverse claim, the plaintiff shall recover costs if the defendant does not relinquish in the proper United States land office or disclaim in writing any interest or estate in the property within 20 days from the filing of said adverse claim in such land office.

History: **En. Sec. 234, p. 92, Bannack Stat.; re-en. Sec. 255, p. 188, L. 1867; re-en. Sec. 304, p. 93, Cod. Stat. 1871; re-en. Sec. 355, p. 138, L. 1877; re-en. Sec. 355, 1st Div. Rev. Stat. 1879; amd. Sec. 367, 1st Div. Comp. Stat. 1887; re-en. Sec. 1311, C. Civ. Proc. 1895; re-en. Sec. 6871, Rev. C. 1907; re-en. Sec. 9489, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 739; re-en. Sec. 9489, R.C.M. 1935; R.C.M. 1947, 93-6213.**

70-28-113. Order for survey or measurement. (1) The court in which an action is pending for the recovery of real property or mining claims or for damages for an injury or to quiet title or to determine adverse claims thereto or a judge thereof may on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter into or upon the property or mining claim and make survey or measurement thereof or of any tunnels, shafts, or drifts therein for the purpose of the action even though entry for such purpose has to be made through other lands or mining claims belonging to parties to the action.

(2) The order must describe the property, and a copy thereof must be served on the owner or occupant, and thereupon such party may enter the property, with necessary surveyors and assistants, and make such survey and measurement; but if unnecessary damage be done to the property, he is liable therefor.

History: **(1)En. Sec. 237, p. 92, Bannack Stat.; re-en. Sec. 258, p. 188, L. 1867; re-en. Sec. 307, p. 95, Cod. Stat. 1871; en. Sec. 357, p. 138, L. 1877; re-en. Sec. 357, 1st Div. Rev. Stat. 1879; re-en. Sec. 369, 1st Div. Comp. Stat. 1887; amd. Sec. 1314, C. Civ. Proc. 1895; re-en. Sec. 6874, Rev. C. 1907; re-en. Sec. 9492, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 742; re-en. Sec. 9492, R.C.M. 1935; Sec. 93-6216, R.C.M. 1947; (2)En. Sec. 238, p. 92, Bannack Stat.; re-en. Sec. 259, p. 188, L. 1867; re-en. Sec. 308, p. 95, Cod. Stat. 1871; re-en. Sec. 358, p. 139, L. 1877; re-en. Sec. 358, 1st Div. Rev. Stat. 1879; re-en. Sec. 370, 1st Div. Comp. Stat. 1887; re-en. Sec. 1315, C. Civ. Proc. 1895; re-en. Sec. 6875, Rev. C. 1907; re-en. Sec. 9493, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 743; re-en. Sec. 9493, R.C.M. 1935; Sec 93-6217, R.C.M. 1947; R.C.M. 1947, 93-6216, 93-6217.**

Part 2

Property Granted to Heirs of Deceased Entryman — Quiet Title

70-28-201. Action authorized. Whenever the government of the United States has granted lands in the state of Montana to the heirs of a deceased entryman, any person who claims an estate of inheritance or interest in such lands may bring and maintain an action in rem against all the world in the district court for the county in which such real property is situated to establish his title to such property and to determine all adverse claims thereto. Any number of separate parcels of land claimed by the plaintiff may be included in the same action.

History: **En. Sec. 1, Ch. 15, L. 1915; re-en. Sec. 9501, R.C.M. 1921; re-en. Sec. 9501, R.C.M. 1935; R.C.M. 1947, 93-6225.**

70-28-202. General procedural provisions applicable. Except as herein otherwise provided, all the provisions and rulings of law relating to evidence, pleading, practice, new trials, and appeals applicable to other civil actions shall apply to the actions hereby authorized.

History: En. Sec. 12, Ch. 15, L. 1915; re-en. Sec. 9512, R.C.M. 1921; re-en. Sec. 9512, R.C.M. 1935; R.C.M. 1947, 93-6236(part).

70-28-203. Remedies cumulative. The remedies provided for by this part shall be deemed cumulative and in addition to any other remedy now or hereafter provided by law for quieting or establishing title to real property.

History: En. Sec. 14, Ch. 15, L. 1915; re-en. Sec. 9515, R.C.M. 1921; re-en. Sec. 9515, R.C.M. 1935; R.C.M. 1947, 93-6239.

70-28-204. Executor, administrator, or guardian as party. An executor, administrator, or guardian or other person claiming an interest by deed of conveyance or otherwise may maintain, as plaintiff, and may appear and defend in the action herein provided for.

History: En. Sec. 14, Ch. 15, L. 1915; re-en. Sec. 9514, R.C.M. 1921; re-en. Sec. 9514, R.C.M. 1935; R.C.M. 1947, 93-6238.

70-28-205. Complaint. The action shall be commenced by the filing of a verified complaint in which the parties so commencing the same shall be named as plaintiffs and the defendants shall be described as "all persons claiming any interest in or lien upon the real property herein described or any part thereof" and which shall:

(1) contain a statement of the facts enumerated in 70-28-201;

(2) contain a particular description of such real property; and

(3) specify the estate, title, or interest of the plaintiff therein.

History: En. Sec. 2, Ch. 15, L. 1915; re-en. Sec. 9502, R.C.M. 1921; re-en. Sec. 9502, R.C.M. 1935; R.C.M. 1947, 93-6226.

70-28-206. Affidavit to accompany complaint. (1) At the time of filing the complaint, the plaintiff shall file with the same his affidavit fully and explicitly setting forth and showing:

(a) the character of his estate, right, title, interest, or claim in the property;

(b) whether or not he has ever made any conveyance of his interest in said property or any part thereof and, if so, when and to whom; also a statement of any and all existing mortgages, deeds of trust, judgments, or other liens thereon;

(c) when and where the deceased entryman of said property died;

(d) what kin or relationship the claimant bore to the entryman at the time of his death; and

(e) the names and residences of any other persons who are next of kin or entitled to succeed to any portion of the lands, the subject of said action, and the names of and residences of all persons who have liens upon the property or any part thereof adversely to the plaintiff if he knows or has been informed or has been able to discover any such person.

(2) If the plaintiff is unable to state any one or more of the matters herein required, he shall set forth and show fully and explicitly the reasons for such inability.

(3) Such affidavit shall constitute a part of the judicial record.

(4) If the plaintiff be a person under guardianship, the affidavit shall be made by his guardian.

History: En. Sec. 3, Ch. 15, L. 1915; re-en. Sec. 9503, R.C.M. 1921; re-en. Sec. 9503, R.C.M. 1935; R.C.M. 1947, 93-6227; amd. Sec. 183, Ch. 575, L. 1981.

70-28-207. Summons — issuance and form. Upon the filing of the complaint and affidavit, a summons must be issued under the seal of the court, which shall contain the name of the court and county in which the action is brought, the name of the plaintiff, and the particular description of the real property involved and shall be directed to "all persons claiming any interest in or lien upon the real property herein described or any part thereof" as defendants and shall be substantially in the following form:

"In the district court of the .... judicial district of the state of Montana, in and for the county of ..... Plaintiff, vs. all persons claiming any interest in or lien upon the real property herein described or any part thereof, defendants.

The state of Montana to all persons claiming any interest in or lien upon the real property herein described or any part thereof, defendants, Greeting:

You are hereby required to appear and answer the complaint of ...., plaintiff, filed with the clerk of the above-entitled court, within 60 days after the first publication of this summons, and set forth what interest or lien, if any, you have in or upon that certain real property or any part thereof situated in the county of ...., state of Montana, particularly described as follows: (Here insert description.)

And you are hereby notified that, unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint, to wit: (Here insert a statement of the relief so demanded.)

Witness my hand and the seal of said court this .... day of ...., A.D. 19...

..............., Clerk"

History: **En. Sec. 4, Ch. 15, L. 1915; re-en. Sec. 9504, R.C.M. 1921; re-en. Sec. 9504, R.C.M. 1935; R.C.M. 1947, 93-6228.**

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

70-28-208. Publication and posting of summons. (1) The summons shall be published in a newspaper of general circulation published in the county in which the action is brought. The newspaper in which such publication is to be made shall be designated by an order of the court or judge thereof to be signed and filed with the clerk. No other order for the publication of the summons shall be necessary, nor shall any affidavit therefor be required, nor need any copy of the complaint be served, except as hereinafter required. The summons shall be published at least once a week for a period of 5 weeks and to each publication thereof shall be appended a memorandum, signed by the plaintiff's attorney, in substance as follows "The following persons are said to claim an interest in or lien upon said property, adverse to plaintiff." (Give names and addresses as above provided.)

(2) A copy of the summons together with a copy of the foregoing memorandum shall be posted in a conspicuous place on each separate parcel of the property described in the complaint within 10 days after the first publication of the summons.

History: **En. Sec. 5, Ch. 15, L. 1915; re-en. Sec. 9505, R.C.M. 1921; re-en. Sec. 9505, R.C.M. 1935; R.C.M. 1947, 93-6229.**

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

70-28-209. Personal service of summons — service by mail. (1) If the affidavit discloses the name of any person next of kin or relationship to the deceased entryman or entitled to succeed to any part of said property or the name of a person who claims or may claim an interest by mortgage, trust deed, judgment, or other lien, the summons shall also be personally served upon such person, if he can be found within the state, together with a copy of the complaint and a copy of said affidavit, during the period of the publication of the summons, and to the copy of the summons delivered to any such person there shall be appended a copy of the memorandum provided in 70-28-208.

(2) If such person resides out of the state, a copy of the summons, memorandum, complaint, and affidavit shall be, within 10 days after the first publication of the summons, deposited in the United States post office, enclosed in a sealed envelope, postage prepaid, addressed to such person at the address given in the affidavit or, if no address be given therein, then at the county seat of the county in which the action was brought. If such person resides within the state and could not with due diligence be found within the state within the period of the publication of the summons, then said notice aforesaid shall be mailed to him, as above provided, forthwith upon the expiration of said period of said publication.

History: En. Sec. 6, Ch. 15, L. 1915; re-en. Sec. 9506, R.C.M. 1921; re-en. Sec. 9506, R.C.M. 1935; R.C.M. 1947, 93-6230.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

70-28-210. Jurisdiction acquired by service — complete. Upon the completion of the publication and posting of the summons and its service upon and mailing to the persons, if any, upon whom it is hereby directed to be so specially served, the court shall have full and complete jurisdiction over the plaintiff and the property and of the person of every one having or claiming any estate, right, title, or interest in or to or lien upon such property or any part thereof and shall be deemed to have obtained the possession and control of said property for the purposes of the action and shall have full and complete jurisdiction to render the judgment therein which is provided for in this part.

History: En. Sec. 7, Ch. 15, L. 1915; re-en. Sec. 9507, R.C.M. 1921; re-en. Sec. 9507, R.C.M. 1935; R.C.M. 1947, 93-6231.

70-28-211. Depositions. (1) At any time after the issuance of the summons, any party to the action may take depositions therein in conformity to law, upon notice to the adverse party sought to be bound by such depositions and who has appeared in the action, if any, and upon notice filed with the clerk.

(2) The depositions may be used by any party against any other party giving or receiving the notice (except the clerk), subject to all just exceptions.

History: En. Sec. 12, Ch. 15, L. 1915; re-en. Sec. 9512, R.C.M. 1921; re-en. Sec. 9512, R.C.M. 1935; R.C.M. 1947, 93-6236(part).

Cross-References

Depositions, Rules 27, 28, 30, and 31, M.R.Civ.P. (see Title 25, ch. 20).

70-28-212. Time for appearance by defendant — answer. At any time within the first 60 days from the first publication of the summons or within such further time, not exceeding 30 days, as the court may for good cause grant, any person having or claiming any estate, right, title, or interest in or to or lien upon said property or any part thereof may appear and make himself a party to the action by pleading to the complaint. All answers must be verified and set forth specifically the kin or relationship of the deceased entryman and the estate, right, title, interest, or lien so claimed.

History: **En. Sec. 8, Ch. 15, L. 1915; re-en. Sec. 9508, R.C.M. 1921; re-en. Sec. 9508, R.C.M. 1935; R.C.M. 1947, 93-6232.**

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

70-28-213. Recording of notice by plaintiff and defendant. (1) The plaintiff must, at the time of filing the complaint, and every defendant to claim or claiming any affirmative relief must, at the time of filing his answer, record in the office of the county clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the object of the action or the defense and a particular description of the property affected thereby.

(2) The clerk and recorder shall record the same in a book of the miscellaneous records of his office and make a reference as to the date and time of the filing of such notice and, when recorded, to the book and page record thereof.

History: **En. Sec. 9, Ch. 15, L. 1915; re-en. Sec. 9509, R.C.M. 1921; re-en. Sec. 9509, R.C.M. 1935; R.C.M. 1947, 93-6233.**

70-28-214. Default judgment prohibited — proof and inquiry required. No judgment in any such action shall be given by default, but the court must require proof of the facts alleged in the complaint and other pleadings, and the court must further make diligent inquiry of the plaintiff and all defendants appearing concerning the next of kin of said deceased entryman, and upon such examination should any heir be discovered who has not been served or who has not appeared, the court may order such heir brought in if necessary for the determination herein provided for.

History: **En. Sec. 10, Ch. 15, L. 1915; re-en. Sec. 9510, R.C.M. 1921; re-en. Sec. 9510, R.C.M. 1935; R.C.M. 1947, 93-6234.**

70-28-215. Judgment — nature and effect — recording. (1) The judgment shall ascertain and determine the heirship of said deceased entryman and all estates, rights, titles, interests, and claims in and to said property and every part thereof, whether the same be legal or equitable, present or future, vested or contingent, or whether the same consists of mortgages or liens of any description, and shall be binding and conclusive upon every person who, at the time of the commencement of the action, had or claimed to have any estate, right, title, or interest in or to said property or any part thereof and upon every person claiming under him by title subsequent to the commencement of the action.

(2) A certified copy of the judgment in such action shall be recorded in the office of the clerk and recorder of the county in which said action was commenced, and any party or the successor in interest of any party to said action may at his option file for record in the office of the clerk and recorder of such county the entire judicial record in said action.

History: **En. Sec. 11, Ch. 15, L. 1915; re-en. Sec. 9511, R.C.M. 1921; re-en. Sec. 9511, R.C.M. 1935; R.C.M. 1947, 93-6235; amd. Sec. 184, Ch. 575, L. 1981.**

70-28-216. Subsequent action — notice to original parties required. Whenever judgment in an action hereby authorized shall have been entered as to any real property, no other action relative to the same property or any part thereof maintained under this part shall be tried until proof shall first have been made to the court that all persons who appeared in the first action or their successors in interest have been personally served with the papers mentioned in 70-28-209, either within or without this state, more than 1 month before the time to plead expired.

History: En. Sec. 13, Ch. 15, L. 1915; re-en. Sec. 9513, R.C.M. 1921; re-en. Sec. 9513, R.C.M. 1935; R.C.M. 1947, 93-6237.

Part 3

Entry Townsite Deeds

70-28-301. Entry townsite land defined. "Entry townsite land" means land upon which an entry was made on or before July 1, 1921, by a probate court of any county in the territory or state of Montana for a townsite and a patent for the townsite was issued by the United States to the probate court or judge under the provisions of an act of congress entitled "An Act for the Relief of the Inhabitants of Cities and Towns Upon Public Lands", approved March 2, 1867, or other and subsequent acts of congress relating to entering lands for townsite purposes.

History: En. Sec. 1, Ch. 102, L. 1981.

70-28-302. Petition for deed — qualified claimants. A person may petition for a deed to a lot on entry townsite land from the district court of the county in which the entry townsite land is located if:

(1) the claimant entered the lot and is in possession of the lot; or

(2) the claimant is a successor in interest, by purchase or other lawful method of transferring an interest in land, of a person who originally entered the lot.

History: En. Sec. 2, Ch. 102, L. 1981.

70-28-303. Notice requirements. Upon petition by a claimant for a deed to a lot on entry townsite land, the claimant shall provide published notice of his claim, notice filed with the county clerk and recorder, and personal service as may be required for quiet title actions under Title 70, chapter 28, part 1.

History: En. Sec. 3, Ch. 102, L. 1981.

70-28-304. Judge to issue deed — requirements. If there are no valid conflicting claims to the lot on the entry townsite, the district court judge, as ex officio probate judge of the county, shall issue the claimant a good and sufficient deed for the lot on the entry townsite land upon finding in a hearing that:

(1) the petitioner is a qualified claimant under 70-28-302; and

(2) (a) no deed has been issued by a probate or district court judge of the county where the entry townsite land is located for the claimed lot; or

(b) a deed for the claimed lot has been issued but not recorded and has been lost or cannot be found.

History: En. Sec. 4, Ch. 102, L. 1981.

CHAPTER 29

PARTITION OF REAL PROPERTY

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Part 1
Preliminary Procedure

70-29-101. Action for partition authorized — who may bring. When several cotenants hold and are in possession of real property as joint tenants or tenants in common, in which one or more of them have an estate of inheritance or for life or lives or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof if it appears that a partition cannot be made without a great prejudice to the owners.

History: En. Sec. 492, p. 140, Bannack Stat.; re-en. Sec. 264, p. 190, L. 1867; re-en. Sec. 313, p. 97, Cod. Stat. 1871; re-en. Sec. 364, p. 139, L. 1877; re-en. Sec. 364, 1st Div. Rev. Stat. 1879; re-en. Sec. 377, 1st Div. Comp. Stat. 1887; re-en. Sec. 1340, C. Civ. Proc. 1895; re-en. Sec. 6883, Rev. C. 1907; re-en. Sec. 9516, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 752; re-en. Sec. 9516, R.C.M. 1935; R.C.M. 1947, 93-6301.

70-29-102. Action by minor. (1) An action for the partition of real property shall not be brought by a minor, except by the written authority of the district judge of the county in which the property or a part thereof is situated. The authority shall not be given unless the district judge is satisfied, by affidavit or other competent evidence, that the interests of the minor will be promoted by bringing the action.

(2) A judgment for a partition shall not be rendered in such an action unless the court is satisfied that the interests of the minor will be promoted thereby and that fact is expressly recited in the judgment.

(3) A guardian ad litem for a minor party, in an action for partition, can be appointed only by the court or judge and must give an undertaking in a sum fixed by the judge for the faithful discharge of his trust, which undertaking must be approved by the judge and filed with the clerk.

History: En. Sec. 1341, C. Civ. Proc. 1895; re-en. Sec. 6884, Rev. C. 1907; re-en. Sec. 9517, R.C.M. 1921; re-en. Sec. 9517, R.C.M. 1935; R.C.M. 1947, 93-6302; amd. Sec. 4, Ch. 2, L. 1983.

Cross-References

Appointment of guardian, 25-5-301.

Enforcement of minor's rights, 41-1-202.

70-29-103. Complaint — contents. The interests of all the persons in the property, whether such persons be known or unknown, must be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties or the share or quantity of interest of any of the parties be unknown to the plaintiff or be uncertain or contingent or the ownership of the inheritance depend upon the executory devise or the remainder be a contingent remainder so that such parties cannot be named, that fact must be set forth in the complaint.

History: **En. Sec. 493, p. 140, Bannack Stat.; re-en. Sec. 265, p. 190, L. 1867; re-en. Sec. 314, p. 97, Cod. Stat. 1871; re-en. Sec. 365, p. 139, L. 1877; re-en. Sec. 365, 1st Div. Rev. Stat. 1879; re-en. Sec. 378, 1st Div. Comp. Stat. 1887; re-en. Sec. 1344, C. Civ. Proc. 1895; re-en. Sec. 6887, Rev. C. 1907; re-en. Sec. 9520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 753; re-en. Sec. 9520, R.C.M. 1935; R.C.M. 1947, 93-6305.**

70-29-104. Who must be parties — permissible plaintiffs. (1) The following must be parties to an action for partition:

(a) every person having an undivided share, in possession or otherwise, in the property as tenant in fee, for life, or for years;

(b) every person entitled to the reversion, remainder, or inheritance of an undivided share, after the determination of a particular estate therein;

(c) every person who by any contingency contained in a devise or grant or otherwise is or may become entitled to a beneficial interest in an undivided share thereof;

(d) every person having an inchoate right of dower in an undivided share in the property; and

(e) every person having a right of dower in the property or any part thereof which has not been admeasured.

(2) But no person other than a joint tenant or a tenant in common of the property shall be a plaintiff in the action.

History: **En. Sec. 1342, C. Civ. Proc. 1895; re-en. Sec. 6885, Rev. C. 1907; re-en. Sec. 9518, R.C.M. 1921; re-en. Sec. 9518, R.C.M. 1935; R.C.M. 1947, 93-6303.**

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P.
(see Title 25, ch. 20).

70-29-105. Who may be joined as defendants. (1) The plaintiff may, at his election, make a tenant in dower, for life or for years, of the entire property or a creditor or other person having a lien or interest which attaches to the entire property a defendant in the action. In that case the final judgment may either award to such a party his or her entire right and interest or the proceeds thereof or may reserve and leave unaffected his or her right or interest or any portion thereof.

(2) A person specified in this section who is not made a party is not affected by the judgment in the action.

History: **En. Sec. 1343, C. Civ. Proc. 1895; re-en. Sec. 6886, Rev. C. 1907; re-en. Sec. 9519, R.C.M. 1921; re-en. Sec. 9519, R.C.M. 1935; R.C.M. 1947, 93-6304.**

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P.
(see Title 25, ch. 20).

70-29-106. Unnecessary to join grantees or lienholders not of record. No person having a conveyance of or claiming a lien on the property or some part of it need be made a party to the action unless such conveyance or lien appear of record.

History: **En. Sec. 266, p. 190, L. 1867; re-en. Sec. 315, p. 97, Cod. Stat. 1871; re-en. Sec. 366, p. 140, L. 1877; re-en. Sec. 366, 1st Div. Rev. Stat. 1879; re-en. Sec. 379, 1st Div. Comp. Stat. 1887; re-en. Sec. 1345, C. Civ. Proc. 1895; re-en. Sec. 6888, Rev. C. 1907; re-en. Sec. 9521, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 754; re-en. Sec. 9521, R.C.M. 1935; R.C.M. 1947, 93-6306.**

70-29-107. Lienholders of record as parties. If it appears to the court, by the certificate of the clerk of the court and county clerk and recorder or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or encumbrances of record upon such real property or any part or portion thereof which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action by an amendment or supplemental complaint or appoint a referee to ascertain whether or not such liens or encumbrances have been paid or, if not paid, what amount remains due thereon and their order among the liens or encumbrances severally held by such persons and the parties to the action and whether the amount remaining due thereon has been secured in any manner and, if secured, the nature and extent of the security.

History: En. Sec. 501, p. 142, Bannack Stat.; en. Sec. 273, p. 191, L. 1867; re-en. Sec. 322, p. 98, Cod. Stat. 1871; re-en. Sec. 373, p. 142, L. 1877; re-en. Sec. 373, 1st Div. Rev. Stat. 1879; re-en. Sec. 386, 1st Div. Comp. Stat. 1887; re-en. Sec. 1353, C. Civ. Proc. 1895; re-en. Sec. 6896, Rev. C. 1907; re-en. Sec. 9529, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 761; re-en. Sec. 9529, R.C.M. 1935; R.C.M. 1947, 93-6314.

70-29-108. Lienholders of record to be notified. (1) The plaintiff must cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in 70-29-107, on each person having outstanding liens of record who is not a party to the action to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise of the amount due or to become due, contingently or absolutely, thereon.

(2) In case such person be absent or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the court, in such manner as may be proper.

(3) The report of the referee thereon must be made to the court and must be confirmed, modified, or set aside and a new reference ordered, as the justice of the case may require.

History: En. Sec. 502, p. 142, Bannack Stat.; re-en. Sec. 274, p. 192, L. 1867; re-en. Sec. 323, p. 99, Cod. Stat. 1871; re-en. Sec. 374, p. 142, L. 1877; re-en. Sec. 374, 1st Div. Rev. Stat. 1879; re-en. Sec. 387, 1st Div. Comp. Stat. 1887; re-en. Sec. 1354, C. Civ. Proc. 1895; re-en. Sec. 6897, Rev. C. 1907; re-en. Sec. 9530, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 762; re-en. Sec. 9530, R.C.M. 1935; R.C.M. 1947, 93-6315.

70-29-109. Notice of action to be filed with clerk — lis pendens. (1) Immediately after filing the complaint in the district court, the plaintiff must file in the office of the county clerk and recorder of the county or of the several counties in which the property is situated a notice of the pendency of the action containing:

(a) the names of the parties so far as known;
(b) the object of the action; and
(c) a description of the property to be affected thereby.

(2) From the time of filing such notice, all persons shall be deemed to have notice of the pendency of the action.

History: En. Sec. 495, p. 141, Bannack Stat.; re-en. Sec. 267, p. 190, L. 1867; re-en. Sec. 316, p. 97, Cod. Stat. 1871; re-en. Sec. 367, p. 140, L. 1877; re-en. Sec. 367, 1st Div. Rev. Stat. 1879; re-en. Sec. 380, 1st Div. Comp. Stat. 1887; amd. Sec. 1346, C. Civ. Proc.

1895; re-en. Sec. 6889, Rev. C. 1907; re-en. Sec. 9522, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 755; re-en. Sec. 9522, R.C.M. 1935; R.C.M. 1947, 93-6307.

70-29-110. Summons — to whom directed. The summons must be directed to all the joint tenants and tenants in common and all persons having an interest in or any liens of record by mortgage, judgment, or otherwise upon the property or upon any particular portion thereof and generally to all persons unknown who have or claim any interest in the property.

History: En. Sec. 496, p. 141, Bannack Stat.; re-en. Sec. 268, p. 190, L. 1867; re-en. Sec. 317, p. 97, Cod. Stat. 1871; re-en. Sec. 368, p. 140, L. 1877; re-en. Sec. 368, 1st Div. Rev. Stat. 1879; re-en. Sec. 381, 1st Div. Comp. Stat. 1887; re-en. Sec. 1347, C. Civ. Proc. 1895; re-en. Sec. 6890, Rev. C. 1907; re-en. Sec. 9523, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 756; re-en. Sec. 9523, R.C.M. 1935; R.C.M. 1947, 93-6308.

70-29-111. Unknown and out-of-state parties — how served. (1) If a party having a share or interest is unknown or any one of the known parties resides out of the state or cannot be found therein and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases.

(2) When publication is made, the summons, as published, must be accompanied by a general statement of the nature of the action and a brief description of the property which is the subject of the action.

History: En. Sec. 497, p. 141, Bannack Stat.; re-en. Sec. 269, p. 191, L. 1867; re-en. Sec. 318, p. 98, C. Stat. 1871; re-en. Sec. 369, p. 140, L. 1877; re-en. Sec. 369, 1st Div. Rev. Stat. 1879; re-en. Sec. 382, 1st Div. Comp. Stat. 1887; amd. Sec. 1348, C. Civ. Proc. 1895; re-en. Sec. 6891, Rev. C. 1907; re-en. Sec. 9524, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 757; re-en. Sec. 9524, R.C.M. 1935; R.C.M. 1947, 93-6309.

Cross-References

Service by publication, Rule 4D(5), M.R.Civ.P. (see Title 25, ch. 20).

70-29-112. Answer — contents. The defendants who have been personally served with the summons and a copy of the complaint or who have appeared without such service must set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property, and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they are deemed to have waived their right to such lien unless they state:

(1) the original amount and date of the same and the sum remaining due thereon;

(2) whether the same has been secured in any other way or not; and

(3) if secured, the nature and extent of such security.

History: En. Sec. 498, p. 141, Bannack Stat.; amd. Sec. 270, p. 191, L. 1867; re-en. Sec. 319, p. 98, Cod. Stat. 1871; re-en. Sec. 370, p. 141, L. 1877; re-en. Sec. 370, 1st Div. Rev. Stat. 1879; re-en. Sec. 383, 1st Div. Comp. Stat. 1887; amd. Sec. 1349, C. Civ. Proc. 1895; re-en. Sec. 6892, Rev. C. 1907; re-en. Sec. 9525, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 758; re-en. Sec. 9525, R.C.M. 1935; R.C.M. 1947, 93-6310.

70-29-113. Death or incompetency of parties — proceedings not delayed. (1) If during the pendency of the action a party dies, is committed pursuant to 53-21-127, or otherwise becomes incompetent, the proceedings may not for that cause be delayed or suspended, but the attorney who has appeared for the party may continue to represent the party's interest. If any party has not appeared by an attorney, the court shall appoint an attorney to represent the interest that was held by the party until the party's heirs, legal representatives, or successors in interest have appeared in the action.

(2) An attorney appointed pursuant to subsection (1) must be allowed by the court a reasonable compensation for the attorney's services. The compensation may be taxed as costs against the share or interest represented by the attorney and may be adjudged a lien on the share or interest, in the discretion of the court.

History: En. Sec. 1357, C. Civ. Proc. 1895; re-en. Sec. 6900, Rev. C. 1907; re-en. Sec. 9533, R.C.M. 1921; re-en. Sec. 9533, R.C.M. 1935; R.C.M. 1947, 93-6318; amd. Sec. 23, Ch. 115, L. 1979; amd. Sec. 36, Ch. 490, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 490 in (1), in first sentence after "dies", substituted "is committed pursuant to 53-21-127" for "or becomes seriously mentally ill"; in (2), near beginning of first sentence after "attorney", substituted "appointed pursuant to subsection (1) must" for "so appointed shall"; and made minor changes in style. Amendment effective July 1, 1997.

Part 2
Trial and Judgment

70-29-201. Trial of title or interest of parties. The right of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in such action. The title or interest of the plaintiff in the property, as stated in the complaint, may be controverted by the answer. The title or interest of any defendant in the property, as stated in the complaint, may also be controverted by his answer or the answer of any other defendant, and the title or interest of any defendant, as stated in his answer, may be controverted by the answer of any other defendant and the issues joined as prescribed in Title 25, which may be tried before a jury if the court so direct.

History: En. Sec. 499, p. 141, Bannack Stat.; re-en. Sec. 271, p. 191, L. 1867; re-en. Sec. 320, p. 98, Cod. Stat. 1871; re-en. Sec. 371, p. 140, L. 1877; re-en. Sec. 371, 1st Div. Rev. Stat. 1879; re-en. Sec. 384, 1st Div. Comp. Stat. 1887; en. Sec. 1350, C. Civ. Proc. 1895; re-en. Sec. 6893, Rev. C. 1907; re-en. Sec. 9526, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 759; re-en. Sec. 9526, R.C.M. 1935; R.C.M. 1947, 93-6311.

70-29-202. Court to order sale or partition — appointment of referees. (1) If it be alleged in the complaint and established by evidence or if it appear by the evidence without such allegation in the complaint to the satisfaction of the court that the property or any part is so situated that the partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proofs being made, it must order a partition according to the respective rights of the parties as ascertained by the court and appoint three referees therefor and must designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

(2) The court, with the consent of the parties, may appoint a single referee instead of three referees in the proceedings under the provisions of this chapter, and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.

History: (1)En. Sec. 503, p. 142, Bannack Stat.; re-en. Sec. 275, p. 192, L. 1867; re-en. Sec. 324, p. 99, Cod. Stat. 1871; re-en. Sec. 375, p. 142, L. 1877; re-en. Sec. 375, 1st Div. Rev. Stat. 1879; re-en. Sec. 388, 1st Div. Comp. Stat. 1887; re-en. Sec. 1355, C. Civ. Proc. 1895; re-en. Sec. 6898, Rev. C. 1907; re-en. Sec. 9531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 763; re-en. Sec. 9531, R.C.M. 1935; Sec. 93-6316, R.C.M. 1947; (2)En. Sec. 537, p. 148,

Bannack Stat.; re-en. Sec. 309, p. 196, L. 1867; re-en. Sec. 358, p. 104, L. 1871; rep. Sec. 674, p. 215, L. 1877; en. Sec. 1395, C. Civ. Proc. 1895; re-en. Sec. 6938, Rev. C. 1907; re-en. Sec. 9571, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 797; re-en. Sec. 9571, R.C.M. 1935; Sec. 93-6356, R.C.M. 1947; R.C.M. 1947, 93-6316, 93-6356.

70-29-203. Determination of title required before judgment of sale. When a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the court before the judgment of sale can be made, and where service of the summons has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered, except where there are several unknown parties having an interest in the property, their rights may be considered together in the action and not as between themselves.

History: En. Sec. 499, p. 141, Bannack Stat.; re-en. Sec. 271, p. 191, L. 1867; re-en. Sec. 320, p. 98, Cod. Stat. 1871; re-en. Sec. 371, p. 140, L. 1877; re-en. Sec. 371, 1st Div. Rev. Stat. 1879; re-en. Sec. 384, 1st Div. Comp. Stat. 1887; en. Sec. 1351, C. Civ. Proc. 1895; re-en. Sec. 6894, Rev. C. 1907; re-en. Sec. 9527, R.C.M. 1921; re-en. Sec. 9527, R.C.M. 1935; R.C.M. 1947, 93-6312.

70-29-204. Partial partition. Whenever from any cause it is in the opinion of the court impracticable or highly inconvenient to make a complete partition in the first instance among all the parties in interest, the court may first ascertain and determine the shares or interests respectively held by the original cotenants and thereupon adjudge and cause a partition to be made as if such original cotenants were the parties and sole parties in interest and the only parties to the action and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof, as they may desire.

History: En. Sec. 272, p. 191, L. 1867; re-en. Sec. 321, p. 98, Cod. Stat. 1871; re-en. Sec. 372, p. 141, L. 1877; re-en. Sec. 372, 1st Div. Rev. Stat. 1879; re-en. Sec. 385, 1st Div. Comp. Stat. 1887; re-en. Sec. 1352, C. Civ. Proc. 1895; re-en. Sec. 6895, Rev. C. 1907; re-en. Sec. 9528, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 760; re-en. Sec. 9528, R.C.M. 1935; R.C.M. 1947, 93-6313.

70-29-205. Partition according to rights of parties — roads. (1) In making partition, the referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.

(2) Before making partition or sale, the referees may, whenever it will be for the advantage of those interested, set apart a portion of the property for a way, road, or street, and the portion so set apart shall not be assigned to any of the parties or sold but shall remain an open and public way, road, or street unless the referees shall set the same apart as a private way for the use of the parties interested or some of them, their heirs, and assigns, in which case it shall remain such private way. Whenever the referees have laid out on any tract of land roads sufficient, in the judgment of said referees, to accommodate the public and private wants, they shall report that fact to the court, and upon the

confirmation of their report all other roads on said tract shall cease to be public highways.

History: En. Sec. 504, p. 143, Bannack Stat.; re-en. Sec. 276, p. 192, L. 1867; re-en. Sec. 325, p. 99, Cod. Stat. 1871; re-en. Sec. 376, p. 143, L. 1877; re-en. Sec. 376, 1st Div. Rev. Stat. 1879; re-en. Sec. 389, 1st Div. Comp. Stat. 1887; en. Sec. 1358, C. Civ. Proc. 1895; re-en. Sec. 6901, Rev. C. 1907; re-en. Sec. 9534, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 764; re-en. Sec. 9534, R.C.M. 1935; R.C.M. 1947, 93-6319.

70-29-206. Procedure in relation to lots and subdivisions. When the site of an incorporated city or town is included within the exterior boundaries of the property to be partitioned, on said fact being established by evidence, the following proceedings shall be had:

(1) The court shall thereupon direct the referees to survey and appraise the entire property to be partitioned by actual lots and subdivisions then existing in the actual possession of the several tenants in common, exclusive of the value of improvements thereon, first setting apart necessary portions of the property for ways, roads, and streets, as in 70-29-205 provided, and to report such survey and separate appraisement on each lot and subdivision to the court. The court may confirm, change, modify, or set aside the report in whole or in part and, if necessary, appoint new referees.

(2) When, after the final confirmation of the report of such survey and appraisement, it shall appear by evidence to the satisfaction of the court that an equitable partition of the whole property is impracticable and a sale of the site of such city, town, or any portion thereof will be for the best interest of the owners of the whole property, it shall order a sale thereof; provided that within 60 days thereafter any tenant in common or tenants in common having improvements erected on any town or city lot or subdivision included in such order of sale shall have the prior right to purchase the same at such appraised valuation and pay into court the amount so appraised as the value thereof, and upon such payment, the title shall vest in such purchaser or purchasers, and the court shall cause to be executed by said referees a deed for such lot or subdivision in fee and in severalty to such purchaser or purchasers. Such further proceedings shall then be had as to the remainder of the property and the money so paid to the court as by this chapter provided.

History: En. Sec. 1356, C. Civ. Proc. 1895; re-en. Sec. 6899, Rev. C. 1907; re-en. Sec. 9532, R.C.M. 1921; re-en. Sec. 9532, R.C.M. 1935; R.C.M. 1947, 93-6317.

70-29-207. Allotment of shares of land — improvements. In all cases the court shall direct the referees, in making partition of land, to allot the share of each of the parties owning an interest in the whole or in any part of the premises sought to be partitioned and to locate the share of each cotenant so as to embrace as far as practicable the improvements made by such cotenant upon the property, and the value of the improvements made by the tenants in common must be excluded from the valuation in making allotments, and the land must be valued without regard to such improvements, in case the same can be done without material injury to the rights and interests of the other tenants in common owning such land.

History: En. Sec. 1359, C. Civ. Proc. 1895; re-en. Sec. 6902, Rev. C. 1907; re-en. Sec. 9535, R.C.M. 1921; re-en. Sec. 9535, R.C.M. 1935; R.C.M. 1947, 93-6320(part).

70-29-208. Allotment of land to grantee of tenant in common. Whenever it shall appear in an action for the partition of lands that one or more of the tenants in common, being the owner of an undivided interest in the tract of land sought to be partitioned, has sold to another person a specific tract by metes and bounds out of the common land and executed to the purchaser a deed of conveyance, purporting to convey the whole title to such specific tract to the purchaser in fee and in severalty, the land described in such deed shall be allotted and set apart in partition to such purchaser, his heirs, or assigns or in such other manner as shall make such deed effectual as a conveyance of the whole title to such segregated parcel if such tract or tracts of land can be so allotted or set apart without material injury to the rights and interests of the other cotenants who may not have joined in such conveyance.

History: En. Sec. 1359, C. Civ. Proc. 1895; re-en. Sec. 6902, Rev. C. 1907; re-en. Sec. 9535, R.C.M. 1921; re-en. Sec. 9535, R.C.M. 1935; R.C.M. 1947, 93-6320(part).

70-29-209. Compensation of one party by another in certain cases of partition. (1) When it appears that a partition cannot be made equal between the parties according to their respective rights without prejudice to the rights and interests of some of them and a partition be ordered, the court may adjudge compensation to be made by one party to another on account of the inequality, but such compensation shall not be required to be made to others by owners unknown or by a minor unless it appears that such minor has personal property sufficient for that purpose and that his interest will be promoted thereby.

(2) In all cases the court has power to make compensatory adjustment between the respective parties according to the ordinary principles of equity.

History: En. Sec. 532, p. 147, Bannack Stat.; re-en. Sec. 304, p. 196, L. 1867; re-en. Sec. 353, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1387, C. Civ. Proc. 1895; re-en. Sec. 6930, Rev. C. 1907; re-en. Sec. 9563, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 792; re-en. Sec. 9563, R.C.M. 1935; R.C.M. 1947, 93-6348; amd. Sec. 5, Ch. 2, L. 1983.

70-29-210. Consent of guardian to share of ward. The general guardian of a minor and the guardian entitled to the custody and management of the estate of a person committed pursuant to 53-21-127 or other person adjudged incapable of conducting the person's own affairs, who is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize the person being made a party to an action, may agree upon the share to be set off to the minor or other person entitled to the share. The guardian may execute a release, in the person's behalf, to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

History: En. Sec. 535, p. 148, Bannack Stat.; re-en. Sec. 307, p. 196, L. 1867; re-en. Sec. 356, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1390, C. Civ. Proc. 1895; re-en. Sec. 6933, Rev. C. 1907; re-en. Sec. 9566, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 795; re-en. Sec. 9566, R.C.M. 1935; R.C.M. 1947, 93-6351; amd. Sec. 24, Ch. 115, L. 1979; amd. Sec. 6, Ch. 2, L. 1983; amd. Sec. 37, Ch. 490, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 490 in first sentence, after "estate of a", substituted "person committed pursuant to 53-21-127" for "seriously mentally ill person"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

UPC — persons under disability — guardianship and conservatorship, Title 72, ch. 5.

70-29-211. Referees to make report. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust and describing the property divided and the shares allotted to each party with a particular description of each share.

History: En. Sec. 505, p. 143, Bannack Stat.; re-en. Sec. 277, p. 192, L. 1867; re-en. Sec. 326, p. 99, Cod. Stat. 1871; re-en. Sec. 377, p. 143, L. 1877; re-en. Sec. 377, 1st Div. Rev. Stat. 1879; re-en. Sec. 390, 1st Div. Comp. Stat. 1887; re-en. Sec. 1360, C. Civ. Proc. 1895; re-en. Sec. 6903, Rev. C. 1907; re-en. Sec. 9536, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 765; re-en. Sec. 9536, R.C.M. 1935; R.C.M. 1947, 93-6321.

70-29-212. Judgment upon confirmation of report — effect. (1) The court may confirm, change, modify, or set aside the report and if necessary appoint new referees.

(2) Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive on all:

(a) persons named as parties to the action and their legal representatives, who have at the time any interest in the property divided or any part thereof, as owners in fee or as tenants for life or for years or as entitled to the reversion, remainder, or the inheritance of such property or any part thereof after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property or who have an interest in any undivided share thereof, as tenants for years or for life;

(b) persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication;

(c) other persons claiming from such parties or persons or either of them.

(3) No judgment is invalidated by reason of the death of any party before final judgment or decree, but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent as if it had been entered before his death.

History: En. Sec. 506, p. 143, Bannack Stat.; amd. Sec. 278, p. 192, L. 1867; re-en. Sec. 327, p. 100, Cod. Stat. 1871; amd. Sec. 378, p. 143, L. 1877; re-en. Sec. 378, 1st Div. Rev. Stat. 1879; re-en. Sec. 391, 1st Div. Comp. Stat. 1887; en. Sec. 1361, C. Civ. Proc. 1895; re-en. Sec. 6904, Rev. C. 1907; re-en. Sec. 9537, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 766; re-en. Sec. 9537, R.C.M. 1935; R.C.M. 1947, 93-6322.

70-29-213. Judgment not to affect certain tenants for years. The judgment does not affect tenants for years, less than 10, to the whole of the property which is the subject of the partition.

History: En. Sec. 507, p. 143, Bannack Stat.; re-en. Sec. 279, p. 193, L. 1867; re-en. Sec. 328, p. 100, Cod. Stat. 1871; re-en. Sec. 379, p. 144, L. 1877; re-en. Sec. 379, 1st Div. Rev. Stat. 1879; re-en. Sec. 392, 1st Div. Comp. Stat. 1887; re-en. Sec. 1362, C. Civ. Proc. 1895; re-en. Sec. 6905, Rev. C. 1907; re-en. Sec. 9538, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 767; re-en. Sec. 9538, R.C.M. 1935; R.C.M. 1947, 93-6323.

70-29-214. Status of estate for life or years when partial sale ordered. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

History: En. Sec. 510, p. 143, Bannack Stat.; re-en. Sec. 282, p. 193, L. 1867; re-en. Sec. 331, p. 100, Cod. Stat. 1871; re-en. Sec. 382, p. 144, L. 1877; re-en. Sec. 382, 1st Div. Rev. Stat. 1879; re-en. Sec. 395, 1st Div. Comp. Stat. 1887; re-en. Sec. 1365, C. Civ. Proc. 1895; re-en. Sec. 6908, Rev. C. 1907; re-en. Sec. 9541, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 770; re-en. Sec. 9541, R.C.M. 1935; R.C.M. 1947, 93-6326.

70-29-215. Lien on undivided interest — status after partition. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party, but such share must be first charged with its just proportion of the costs of the partition in preference to such lien.

History: En. Sec. 509, p. 143, Bannack Stat.; re-en. Sec. 281, p. 193, L. 1867; re-en. Sec. 330, p. 100, Cod. Stat. 1871; re-en. Sec. 381, p. 144, L. 1877; re-en. Sec. 381, 1st Div. Rev. Stat. 1879; re-en. Sec. 394, 1st Div. Comp. Stat. 1887; re-en. Sec. 1364, C. Civ. Proc. 1895; re-en. Sec. 6907, Rev. C. 1907; re-en. Sec. 9540, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 769; re-en. Sec. 9540, R.C.M. 1935; R.C.M. 1947, 93-6325.

Cross-References

Liens generally, Title 71, ch. 3, part 1.

70-29-216. Abstract of title — when cost of allowed — filing and inspection. (1) If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned and such abstract shall have been procured by the plaintiff or if the plaintiff shall have failed to have the same made before the commencement of the action and any one of the defendants shall have had such abstract afterward made, the cost of the abstract, with interest thereon from the time the same is subject to the inspection of the respective parties to the action, must be allowed and taxed.

(2) Whenever such abstract is procured by the plaintiff, before the commencement of the action he must file with his complaint a notice that an abstract of the title has been made and is subject to the inspection and use of all the parties to the action, designating therein where the abstract will be kept for inspection. But if the plaintiff shall have failed to procure such abstract before commencing the action and any defendant shall procure the same to be made, he shall, as soon as he has directed it to be made, file a notice thereof in the action with the clerk of the court, stating who is making the same and where it will be kept when finished.

(3) The court or judge thereof may direct, from time to time during the progress of the action, who shall have the custody of the abstract.

History: En. Sec. 1397, C. Civ. Proc. 1895; re-en. Sec. 6940, Rev. C. 1907; re-en. Sec. 9573, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 799; re-en. Sec. 9573, R.C.M. 1935; R.C.M. 1947, 93-6358.

70-29-217. Abstract — how made and verified. The abstract mentioned in 70-29-216 may be made by any competent searcher of records and need not be certified by the county clerk and recorder or other officer, but instead thereof it must be verified by the affidavit of the person making it to the effect that he believes it to be correct; but the same may be corrected from time to time, if found incorrect, under the direction of the court.

History: En. Sec. 1398, C. Civ. Proc. 1895; re-en. Sec. 6941, Rev. C. 1907; re-en. Sec. 9574, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 800; re-en. Sec. 9574, R.C.M. 1935; R.C.M. 1947, 93-6359.

70-29-218. Costs of partition — apportionment among parties — lien. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants for the common benefit, fees of referees, or other disbursements must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case, they shall be a lien on the several shares and the judgment may be enforced by execution against such shares and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto or any of them.

History: En. Sec. 536, p. 148, Bannack Stat.; re-en. Sec. 308, p. 196, L. 1867; re-en. Sec. 357, p. 104, L. 1871; rep. Sec. 674, p. 215, L. 1877; en. Sec. 1394, C. Civ. Proc. 1895; re-en. Sec. 6937, Rev. C. 1907; re-en. Sec. 9570, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 796; re-en. Sec. 9570, R.C.M. 1935; R.C.M. 1947, 93-6355.

Cross-References

Civil procedure — costs, Title 25, ch. 10.

70-29-219. Expenses of referees and surveyor. The expenses of the referees, including those of a surveyor and his assistants, when employed, must be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably.

History: En. Sec. 508, p. 143, Bannack Stat.; re-en. Sec. 280, p. 193, L. 1867; re-en. Sec. 329, p. 100, Cod. Stat. 1871; re-en. Sec. 380, p. 144, L. 1877; re-en. Sec. 380, 1st Div. Rev. Stat. 1879; re-en. Sec. 393, 1st Div. Comp. Stat. 1887; re-en. Sec. 1363, C. Civ. Proc. 1895; re-en. Sec. 6906, Rev. C. 1907; re-en. Sec. 9539, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 768; re-en. Sec. 9539, R.C.M. 1935; R.C.M. 1947, 93-6324.

70-29-220. Disbursements by party — interest allowed. Whenever during the progress of the action for partition any disbursements shall have been made under the direction of the court or the judge thereof by a party thereto, interest must be allowed thereon from the time of making such disbursements.

History: En. Sec. 1399, C. Civ. Proc. 1895; re-en. Sec. 6942, Rev. C. 1907; re-en. Sec. 9575, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 801; re-en. Sec. 9575, R.C.M. 1935; R.C.M. 1947, 93-6360.

70-29-221. Expenses of previous litigation. If it appear that other actions or proceedings have been necessarily prosecuted or defended by any one of the tenants in common for the protection, confirmation, or perfecting of the title or setting the boundaries or making a survey or surveys of the estate partitioned, the court shall allow to the parties to the action who have paid the expense of such litigation or other proceedings all the expenses necessarily incurred therein, except counsel fees, which shall have accrued to the common benefit of the other tenants in common, with interest thereon from the date of making the expenditures, and the same must be pleaded and allowed by the court and included in the final judgment and shall be a lien upon the share of each tenant, respectively, in proportion to his interest and shall be enforced in the same manner as taxable costs of partition are taxed and collected.

History: En. Sec. 1396, C. Civ. Proc. 1895; re-en. Sec. 6939, Rev. C. 1907; re-en. Sec. 9572, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 798; re-en. Sec. 9572, R.C.M. 1935; R.C.M. 1947, 93-6357.

Part 3

Sale and Disposition of Proceeds

70-29-301. Sale to be at public auction — notice. All sales of real property made by referees under this chapter must be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that must be stated in the notice.

History: En. Sec. 515, p. 145, Bannack Stat.; re-en. Sec. 287, p. 194, L. 1867; re-en. Sec. 336, p. 101, Cod. Stat. 1871; re-en. Sec. 387, p. 146, L. 1877; re-en. Sec. 387, 1st Div.

Rev. Stat. 1879; re-en. Sec. 400, 1st Div. Comp. Stat. 1887; re-en. Sec. 1370, C. Civ. Proc. 1895; re-en. Sec. 6913, Rev. C. 1907; re-en. Sec. 9546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 775; re-en. Sec. 9546, R.C.M. 1935; R.C.M. 1947, 93-6331.

Cross-References

Notice of sale on execution, 25-13-701.

70-29-302. Terms of sale to be made known. In all cases of sales of property, the terms must be made known at the time; and if the premises consist of distinct farms and lots, they must be sold separately.

History: En. Sec. 522, p. 146, Bannack Stat.; re-en. Sec. 294, p. 195, L. 1867; re-en. Sec. 343, p. 102, Cod. Stat. 1871; re-en. Sec. 394, p. 147, L. 1877; re-en. Sec. 394, 1st Div. Rev. Stat. 1879; re-en. Sec. 407, 1st Div. Comp. Stat. 1887; re-en. Sec. 1377, C. Civ. Proc. 1895; re-en. Sec. 6920, Rev. C. 1907; re-en. Sec. 9553, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 782; re-en. Sec. 9553, R.C.M. 1935; R.C.M. 1947, 93-6338.

70-29-303. Who may not be purchasers. (1) Neither of the referees nor any person for the benefit of either of them can be interested in any purchase, nor can a guardian of a minor party be interested in the purchase of any real property being the subject of the action except for the benefit of the minor.

(2) All sales contrary to the provisions of this section are void.

History: En. Sec. 523, p. 146, Bannack Stat.; re-en. Sec. 295, p. 195, L. 1867; re-en. Sec. 344, p. 102, Cod. Stat. 1871; re-en. Sec. 395, p. 147, L. 1877; re-en. Sec. 395, 1st Div. Rev. Stat. 1879; re-en. Sec. 408, 1st Div. Comp. Stat. 1887; re-en. Sec. 1378, C. Civ. Proc. 1895; re-en. Sec. 6921, Rev. C. 1907; re-en. Sec. 9554, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 783; re-en. Sec. 9554, R.C.M. 1935; R.C.M. 1947, 93-6339; amd. Sec. 7, Ch. 2, L. 1983.

70-29-304. Party or encumbrancer as purchaser. When a party entitled to a share of the property or an encumbrancer entitled to have his lien paid out of the sale becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

History: En. Sec. 526, p. 146, Bannack Stat.; re-en. Sec. 298, p. 195, L. 1867; re-en. Sec. 347, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1381, C. Civ. Proc. 1895; re-en. Sec. 6924, Rev. C. 1907; re-en. Sec. 9557, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 786; re-en. Sec. 9557, R.C.M. 1935; R.C.M. 1947, 93-6342.

70-29-305. Court to direct terms of credit and investment. The court must, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit and for that portion of which the purchase money is required by the provisions herein contained to be invested for the benefit of unknown owners, minors, or parties out of this state.

History: En. Sec. 516, p. 145, Bannack Stat.; re-en. Sec. 288, p. 194, L. 1867; re-en. Sec. 337, p. 101, Cod. Stat. 1871; re-en. Sec. 388, p. 146, L. 1877; re-en. Sec. 388, 1st Div. Rev. Stat. 1879; re-en. Sec. 401, 1st Div. Comp. Stat. 1887; re-en. Sec. 1371, C. Civ. Proc. 1895; re-en. Sec. 6914, Rev. C. 1907; re-en. Sec. 9547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 776; re-en. Sec. 9547, R.C.M. 1935; R.C.M. 1947, 93-6332; amd. Sec. 8, Ch. 2, L. 1983.

70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit for the:

(1) shares of any known owner of full age, in the name of such owner;

(2) shares of a minor, in the name of the guardian of such minor; and

(3) other shares, in the name of the clerk of the court of the county and his successors in office.

History: En. Sec. 517, p. 145, Bannack Stat.; re-en. Sec. 289, p. 194, L. 1867; re-en. Sec. 338, p. 101, Cod. Stat. 1871; re-en. Sec. 389, p. 146, L. 1877; re-en. Sec. 389, 1st Div. Rev. Stat. 1879; re-en. Sec. 402, 1st Div. Comp. Stat. 1887; re-en. Sec. 1372, C. Civ. Proc. 1895; re-en. Sec. 6915, Rev. C. 1907; re-en. Sec. 9548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 777; re-en. Sec. 9548, R.C.M. 1935; R.C.M. 1947, 93-6333; amd. Sec. 9, Ch. 2, L. 1983.

70-29-307. Security taken and investment made in name of clerk. When the security of the proceeds of sale is taken or when an investment of any such proceeds is made, it must be done, except as herein otherwise provided, in the name of the clerk of the court where the papers are filed and his successors in office, who must hold the same for the use and benefit of the persons interested, subject to the order of the court.

History: En. Sec. 529, p. 147, Bannack Stat.; re-en. Sec. 301, p. 195, L. 1867; re-en. Sec. 350, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1384, C. Civ. Proc. 1895; re-en. Sec. 6927, Rev. C. 1907; re-en. Sec. 9560, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 789; re-en. Sec. 9560, R.C.M. 1935; R.C.M. 1947, 93-6345.

70-29-308. Agreement of parties as to security. When security is taken by the referees on a sale and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled or when shares and proportions have been previously adjudged by the court, such securities must be taken in the names of and payable to the parties respectively entitled thereto and must be delivered to such parties upon their receipt therefor. Such agreement and receipt must be returned and filed with the clerk of the court.

History: En. Sec. 530, p. 147, Bannack Stat.; re-en. Sec. 302, p. 196, L. 1867; re-en. Sec. 351, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1385, C. Civ. Proc. 1895; re-en. Sec. 6928, Rev. C. 1907; re-en. Sec. 9561, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 790; re-en. Sec. 9561, R.C.M. 1935; R.C.M. 1947, 93-6346.

70-29-309. Referees' report of sale. (1) After completing a sale of the property or any part thereof ordered to be sold, the referees must report the same to the court with:

(a) a description of the different parcels of land sold to each purchaser;
(b) the price paid or secured;
(c) the terms and conditions of the sale; and
(d) the securities, if any, taken.

(2) The report must be filed in the office of the clerk of the court and a certified copy thereof in the office of the county clerk and recorder of the county where the property is situated.

History: En. Sec. 524, p. 146, Bannack Stat.; re-en. Sec. 296, p. 195, L. 1867; re-en. Sec. 345, p. 102, Cod. Stat. 1871; re-en. Sec. 396, p. 147, L. 1877; re-en. Sec. 396, 1st Div. Rev. Stat. 1879; re-en. Sec. 409, 1st Div. Comp. Stat. 1887; re-en. Sec. 1379, C. Civ. Proc. 1895; re-en. Sec. 6922, Rev. C. 1907; re-en. Sec. 9555, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 784; re-en. Sec. 9555, R.C.M. 1935; R.C.M. 1947, 93-6340.

70-29-310. Execution of conveyances and taking of security. If the sale be confirmed by the court, an order must be entered directing the referees to execute conveyances and take securities pursuant to such sale which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of sale.

History: En. Sec. 525, p. 146, Bannack Stat.; re-en. Sec. 297, p. 195, L. 1867; re-en. Sec. 346, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1380, C. Civ. Proc.

1895; re-en. Sec. 6923, Rev. C. 1907; re-en. Sec. 9556, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 785; re-en. Sec. 9556, R.C.M. 1935; R.C.M. 1947, 93-6341.

70-29-311. Conveyances to be recorded — bar against parties. The conveyances must be recorded in the county where the premises are situated and shall be a bar against all persons interested in the property in any way who shall have been named as parties in the action and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them or either of them and against all persons having unrecorded deeds or liens at the commencement of the action.

History: En. Sec. 527, p. 146, Bannack Stat.; re-en. Sec. 299, p. 195, L. 1867; re-en. Sec. 348, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1382, C. Civ. Proc. 1895; re-en. Sec. 6925, Rev. C. 1907; re-en. Sec. 9558, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 787; re-en. Sec. 9558, R.C.M. 1935; R.C.M. 1947, 93-6343.

70-29-312 through 70-29-320 reserved.

70-29-321. Priorities for application of proceeds. The proceeds of the sale of encumbered property must be applied under the direction of the court as follows:

(1) to pay its just proportion of the general costs of the action;

(2) to pay the costs of the reference;

(3) to satisfy and cancel of record the several liens in their order of priority by payment of the sums due and to become due, the amount due to be verified by affidavit at the time of payment;

(4) the residue among the owners of the property sold, according to their respective shares therein.

History: En. Sec. 511, p. 144, Bannack Stat.; re-en. Sec. 283, p. 193, L. 1867; re-en. Sec. 332, p. 100, Cod. Stat. 1871; re-en. Sec. 383, p. 145, L. 1877; re-en. Sec. 383, 1st Div. Rev. Stat. 1879; re-en. Sec. 396, 1st Div. Comp. Stat. 1887; re-en. Sec. 1366, C. Civ. Proc. 1895; re-en. Sec. 6909, Rev. C. 1907; re-en. Sec. 9542, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 771; re-en. Sec. 9542, R.C.M. 1935; R.C.M. 1947, 93-6327.

70-29-322. Other securities to be exhausted first. Whenever any party to an action who holds a lien upon the property or any part thereof has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale or may order a just deduction to be made from the amount of the lien on the property on account thereof.

History: En. Sec. 512, p. 144, Bannack Stat.; re-en. Sec. 284, p. 193, L. 1867; re-en. Sec. 333, p. 100, Cod. Stat. 1871; re-en. Sec. 384, p. 145, L. 1877; re-en. Sec. 384, 1st Div. Rev. Stat. 1879; re-en. Sec. 397, 1st Div. Comp. Stat. 1887; re-en. Sec. 1367, C. Civ. Proc. 1895; re-en. Sec. 6910, Rev. C. 1907; re-en. Sec. 9543, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 772; re-en. Sec. 9543, R.C.M. 1935; R.C.M. 1947, 93-6328.

70-29-323. Disposition of proceeds generally. The proceeds of sale and the securities taken by the referees or any part thereof must be distributed by them to the persons entitled thereto whenever the court so directs. But in case no direction be given, all of such proceeds and securities must be paid into the court or deposited therein or as directed by the court.

History: En. Sec. 513, p. 144, Bannack Stat.; re-en. Sec. 285, p. 194, L. 1867; re-en. Sec. 334, p. 101, Cod. Stat. 1871; re-en. Sec. 385, p. 145, L. 1877; re-en. Sec. 385, 1st Div. Rev. Stat. 1879; re-en. Sec. 398, 1st Div. Comp. Stat. 1887; re-en. Sec. 1368, C. Civ. Proc. 1895; re-en. Sec. 6911, Rev. C. 1907; re-en. Sec. 9544, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 773; re-en. Sec. 9544, R.C.M. 1935; R.C.M. 1947, 93-6329.

70-29-324. Continuation of action when proceeds paid into court. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action and who are known are paid into the court, the action may continue as between such parties for the determination of their respective claims thereto which must be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings, as in an original action.

History: En. Sec. 514, p. 144, Bannack Stat.; re-en. Sec. 286, p. 194, L. 1867; re-en. Sec. 335, p. 101, Cod. Stat. 1871; re-en. Sec. 386, p. 145, L. 1877; re-en. Sec. 386, 1st Div. Rev. Stat. 1879; re-en. Sec. 399, 1st Div. Comp. Stat. 1887; re-en. Sec. 1369, C. Civ. Proc. 1895; re-en. Sec. 6912, Rev. C. 1907; re-en. Sec. 9545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 774; re-en. Sec. 9545, R.C.M. 1935; R.C.M. 1947, 93-6330.

70-29-325. Future interests — ascertainment — share of proceeds. In all cases of sales when it appears that any person has a vested or contingent or future right or estate in any of the property sold, the court must ascertain and settle the proportional value of such contingent or vested right or estate and must direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

History: En. Sec. 521, p. 146, Bannack Stat.; re-en. Sec. 293, p. 195, L. 1867; re-en. Sec. 342, p. 102, Cod. Stat. 1871; re-en. Sec. 393, p. 147, L. 1877; re-en. Sec. 393, 1st Div. Rev. Stat. 1879; re-en. Sec. 406, 1st Div. Comp. Stat. 1887; re-en. Sec. 1376, C. Civ. Proc. 1895; re-en. Sec. 6919, Rev. C. 1907; re-en. Sec. 9552, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 781; re-en. Sec. 9552, R.C.M. 1935; R.C.M. 1947, 93-6337.

70-29-326. Tenant for life or years — compensation upon sale. (1) The person entitled to a tenancy for life or years or who has a right or inchoate right of dower, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate and which the person so entitled may consent to accept instead thereof by an instrument in writing filed with the clerk of the court. Upon the filing of such consent, the clerk must enter the same in the minutes of the court.

(2) If such consent be not given, filed, and entered, as provided in subsection (1), at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate and must order the same to be paid to such party or deposited in court for him or her, as the case may require.

(3) If the persons entitled to such estate for life or years be unknown, the court must provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

History: (1)En. Sec. 518, p. 145, Bannack Stat.; re-en. Sec. 290, p. 194, L. 1867; re-en. Sec. 339, p. 101, Cod. Stat. 1871; re-en. Sec. 390, p. 146, L. 1877; re-en. Sec. 390, 1st Div. Rev. Stat. 1879; re-en. Sec. 403, 1st Div. Comp. Stat. 1887; re-en. Sec. 1373, C. Civ. Proc. 1895; re-en. Sec. 6916, Rev. C. 1907; re-en. Sec. 9549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 778; re-en. Sec. 9549, R.C.M. 1935; Sec. 93-6334, R.C.M. 1947; (2)En. Sec. 519, p. 145, Bannack Stat.; re-en. Sec. 291, p. 195, L. 1867; re-en. Sec. 340, p. 102, Cod. Stat. 1871; re-en. Sec. 391, p. 146, L. 1877; re-en. Sec. 391, 1st Div. Rev. Stat. 1879; re-en. Sec. 404, 1st Div. Comp. Stat. 1887; re-en. Sec. 1374, C. Civ. Proc. 1895; re-en. Sec. 6917, Rev. C. 1907; re-en. Sec. 9550, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 779; re-en. Sec. 9550, R.C.M. 1935; Sec. 93-6335, R.C.M. 1947; (3)En. Sec. 520, p. 146, Bannack Stat.; re-en. Sec. 292, p. 195, L. 1867; re-en. Sec. 341, p. 102, Cod. Stat. 1871; re-en. Sec. 392, p. 147, L. 1877;

re-en. Sec. 392, 1st Div. Rev. Stat. 1879; re-en. Sec. 405, 1st Div. Comp. Stat. 1887; re-en. Sec. 1375, C. Civ. Proc. 1895; re-en. Sec. 6918, Rev. C. 1907; re-en. Sec. 9551, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 780; re-en. Sec. 9551, R.C.M. 1935; Sec. 93-6336, R.C.M. 1947; R.C.M. 1947, 93-6334, 93-6335, 93-6336.

70-29-327. Minor's share of proceeds — payment to guardian. When the share of a minor is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action upon giving the security required by law or directed by order of the court.

History: En. Sec. 533, p. 148, Bannack Stat.; re-en. Sec. 305, p. 196, L. 1867; re-en. Sec. 354, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1388, C. Civ. Proc. 1895; re-en. Sec. 6931, Rev. C. 1907; re-en. Sec. 9564, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 793; re-en. Sec. 9564, R.C.M. 1935; R.C.M. 1947, 93-6349; amd. Sec. 10, Ch. 2, L. 1983.

Cross-References

Appointment of guardian ad litem, 25-5-301.

70-29-328. Incompetent's share of proceeds — payment to guardian. The guardian who may be entitled to the custody and management of the estate of a person committed pursuant to 53-21-127 or other person adjudged incapable of conducting the person's own affairs, whose interest in real property has been sold, may receive on behalf of the person the person's share of the proceeds of the real property from the referees. The guardian may receive the interest on executing an undertaking with a surety. The undertaking must be approved by a judge of the court and must state that the guardian will faithfully discharge the trust placed in the guardian and will make an accurate account to the person entitled to the accounting or to the person's legal representative.

History: En. Sec. 534, p. 148, Bannack Stat.; re-en. Sec. 306, p. 196, L. 1867; re-en. Sec. 355, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1389, C. Civ. Proc. 1895; re-en. Sec. 6932, Rev. C. 1907; re-en. Sec. 9565, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 794; re-en. Sec. 9565, R.C.M. 1935; R.C.M. 1947, 93-6350; amd. Sec. 25, Ch. 115, L. 1979; amd. Sec. 38, Ch. 490, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 490 in first sentence, after "estate of a", substituted "person committed pursuant to 53-21-127" for "seriously mentally ill person"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

70-29-329. Proceeds of sale belonging to persons unknown or out-of-state — how invested. Where there are proceeds of a sale belonging to an unknown owner or to a person without the state who has no legal representative within it, the same must be invested in bonds of this state or the United States for the benefit of the persons entitled thereto.

History: En. Sec. 528, p. 146, Bannack Stat.; re-en. Sec. 300, p. 195, L. 1867; re-en. Sec. 349, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1383, C. Civ. Proc. 1895; re-en. Sec. 6926, Rev. C. 1907; re-en. Sec. 9559, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 788; re-en. Sec. 9559, R.C.M. 1935; R.C.M. 1947, 93-6344.

70-29-330. Duty of clerk as to security and investments. The clerk of court in whose name a security is taken or by whom an investment is made and his successors in office must:

(1) receive the interest and principal as it becomes due and apply and invest the same as the court may direct;

(2) deposit with the county treasurer all securities taken; and

(3) keep an account of investments and moneys received by him thereon and the disposition thereof in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons.

History: En. Sec. 531, p. 147, Bannack Stat.; re-en. Sec. 303, p. 196, L. 1867; re-en. Sec. 352, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1386, C. Civ. Proc. 1895; re-en. Sec. 6929, Rev. C. 1907; re-en. Sec. 9562, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 791; re-en. Sec. 9562, R.C.M. 1935; R.C.M. 1947, 93-6347.

CHAPTER 30

EMINENT DOMAIN

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Chapter Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.

Private Property Assessment Act, Title 2, ch. 10, part 1.

Local government subject to Title 70, ch. 30, 7-1-114.

City or Town Council — power of condemnation, 7-5-4106.

County Commissioners — acquisition of right-of-way, 7-14-2107.

Acquisition of land for public ferries and wharves, 7-14-2804, 7-14-2829.

Municipal housing authority — exercise of power of eminent domain, 7-15-4462.

Cemetery association's power of eminent domain, 35-20-104.

Department of Transportation — exercise of right of eminent domain, 60-4-104.

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Municipal airports — acquisition when zoning not sufficient, 67-6-301, 67-10-102.

Pipeline carriers — use of power of eminent domain, 69-13-104.

Connections between lines of different railroads, 69-14-539.

Power of eminent domain — railroads, 69-14-552.

Eminent domain — authorized, 70-1-205.

Mining — right-of-way and eminent domain, Title 82, ch. 2, part 2.

Eminent domain for open-pit mining — purchase of property required, 82-2-221.

Eminent domain — underground storage of natural gas, Title 82, ch. 10, part 3.

Part 1

General and Substantive Provisions

70-30-101. Eminent domain defined. Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

History: En. Sec. 579, p. 189, L. 1877; re-en. Sec. 579, 1st Div. Rev. Stat. 1879; re-en. Sec. 597, 1st Div. Comp. Stat. 1887; amd. Sec. 2210, C. Civ. Proc. 1895; re-en. Sec. 7330, Rev. C. 1907; re-en. Sec. 9933, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1237; re-en. Sec. 9933, R.C.M. 1935; R.C.M. 1947, 93-9901.

70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized;

(4) wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water and drainage and reclaiming lands and for floating logs and lumber on streams not

navigable and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(6) private roads leading from highways to residences or farms;

(7) telephone or electric light lines;

(8) telegraph lines;

(9) sewerage of any city, county, or town or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than 10 families or of any public buildings belonging to the state or to any college or university;

(10) tramway lines;

(11) electric power lines;

(12) logging railways;

(13) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for such time as the court or judge may determine; provided, the grounds of state institutions be excepted;

(14) underground reservoirs suitable for storage of natural gas;

(15) to mine and extract ores, metals, or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others. However, the use of the surface for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose;

(16) to restore and reclaim lands strip- or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1238; re-en. Sec. 9934, R.C.M. 1935; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973; amd. Sec. 1, Ch. 375, L. 1974; R.C.M. 1947, 93-9902; amd. Sec. 18, Ch. 550, L. 1979.

Cross-References

City or Town Council — water supply and regulation, Title 7, ch. 13, part 44.

Acquisition of land for ferry, 7-14-2829.

Municipal housing authority — exercise of power of eminent domain, 7-15-4462.

Municipal airports, Title 67, ch. 10.

Property for waterworks — public use, 85-1-209.

Conduction of water as public use, 85-2-414.

Use of water for irrigation as public use, 85-7-1931.

70-30-103. What private property may be taken. (1) The private property which may be taken under this chapter includes:

(a) all real property belonging to any person;

(b) lands belonging to this state or to any county, city, or town not appropriated to some public use;

(c) property appropriated to public use, but such property must not be taken unless for a more necessary public use than that to which it has already been appropriated;

(d) franchises for roads, bridges, and ferries and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads, or other more necessary public use;

(e) all rights-of-way for any and all the purposes mentioned in 70-30-102 and any and all structures and improvements thereon, and the lands held and used in connection therewith must be subject to be connected with, crossed, or intersected by any other right-of-way of improvements or structures thereon. They must also be subject to a limited use in common with the owner thereof when necessary; but such uses, crossings, intersections, and connections must be made in manner most compatible with the greatest public benefit and least private injury.

(2) All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

History: En. Sec. 582, p. 190, L. 1877; re-en. Sec. 582, 1st Div. Rev. Stat. 1879; re-en. Sec. 600, 1st Div. Comp. Stat. 1887; amd. Sec. 2213, C. Civ. Proc. 1895; re-en. Sec. 7333, Rev. C. 1907; re-en. Sec. 9936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1240; re-en. Sec. 9936, R.C.M. 1935; R.C.M. 1947, 93-9904.

70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in lands subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings or grounds or for permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

(3) an easement, leasehold, or other interest, for so long as the interest is necessary for the purpose described in the complaint, or fee simple when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

History: En. Sec. 581, p. 190, L. 1877; re-en. Sec. 581, 1st Div. Rev. Stat. 1879; re-en. Sec. 599, 1st Div. Comp. Stat. 1887; re-en. Sec. 2212, C. Civ. Proc. 1895; re-en. Sec. 7332, Rev. C. 1907; re-en. Sec. 9935, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1239; re-en. Sec. 9935, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1943; amd. Sec. 2, Ch. 245, L. 1953; amd. Sec. 7, Ch. 259, L. 1955; amd. Sec. 2, Ch. 216, L. 1961; R.C.M. 1947, 93-9903; amd. Sec. 1, Ch. 97, L. 1979; amd. Sec. 1, Ch. 622, L. 1983.

70-30-105. Appropriation of underground gas reservoir — effect on owner's right to drill. (1) The appropriation of any sand, stratum, or formation for use as an underground natural gas storage reservoir shall be without prejudice to the rights of the owner or owners of said lands or of the oil, gas, or other mineral rights therein to drill or bore through the sand, stratum, or formation so appropriated for use as an underground natural gas storage reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that might be contained in said lands above or below the sand, stratum, or formation so appropriated.

(2) Any additional cost or expense required to be incurred in order to protect the underground gas storage reservoir against pollution and the escape of the gas therefrom by reason of such boring or drilling through of the sand, stratum, or formation used as such underground gas storage reservoir shall be paid by the persons, firm, or corporation then owning such underground gas storage reservoir.

History: En. Sec. 5, Ch. 245, L. 1953; R.C.M. 1947, 93-9903.1.

70-30-106. Eminent domain not to be used for coal mining in certain cases — policy. For the following reasons the state's power of eminent domain may not be exercised to mine and extract coal owned by the plaintiff located beneath the surface of property where the title to the surface is vested in others:

(1) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals and affects large areas of land and large numbers of people.

(2) In many areas of Montana set forth in (1) hereinabove, the title to the surface is vested in an owner other than the mineral owner, and the surface owner is putting that surface to a productive use, and it is the public policy of the state to encourage and foster such productive use by such owner, and to permit the mineral owner to condemn the surface owner is to deprive the surface owner of the right to use his property in a productive manner as he determines and is also contrary to public policy as set forth in subsection (4).

(3) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain.

(4) It is the public policy of the state to encourage and foster diversity of land ownership, and the surface mining of coal and control of large areas of land by the surface coal mining industry would not foster public policy and further the public interest.

History: En. 93-9902.1 by Sec. 2, Ch. 311, L. 1973; R.C.M. 1947, 93-9902.1.

70-30-107. Private roads. Private roads may be opened in the manner prescribed by this chapter, but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

History: En. Sec. 2232, C. Civ. Proc. 1895; re-en. Sec. 7352, Rev. C. 1907; re-en. Sec. 9955, R.C.M. 1921; re-en. Sec. 9955, R.C.M. 1935; R.C.M. 1947, 93-9923.

70-30-108. No abrogation of provisions relating to city or county roads. Nothing in this code must be construed to abrogate or repeal any statute providing for the taking of property in any city, town, or county for road or street purposes.

History: En. Sec. 2233, C. Civ. Proc. 1895; re-en. Sec. 7353, Rev. C. 1907; re-en. Sec. 9956, R.C.M. 1921; re-en. Sec. 9956, R.C.M. 1935; R.C.M. 1947, 93-9924.

70-30-109. Temporary logging roads and banking grounds. (1) In the event that temporary roads for logging purposes or grounds for banking purposes are opened or taken, the same shall include only the temporary right to use the same, and the order of condemnation for said road shall fix the length of time and the date from which such road shall be opened or land shall be used, and at the expiration of said period so fixed, the right to use said road or land shall cease, and the use of said land shall revert to the party from whom the same is taken or to his legal successor in interest; provided, that no lands or grounds shall be taken for such temporary logging roads or banking grounds for a period of time longer than 5 years, and when taken for a period of time exceeding 1 year, the amount of damage for such year shall be fixed separately, and the amount fixed for each particular year must be paid on or before January 1 of each year; and in the event that the amount so fixed for any one year is not paid as herein specified, then and in that event the use of such lands shall revert to the party from whom the same is taken or to his successor in interest.

(2) In any suit for the opening of any temporary logging road or for the use of any ground or land for banking purposes, the court shall not finally order the opening of such road or the right to use such land or ground until the amount assessed as damages has been paid into court for the benefit of the party or parties owning or holding such land.

(3) In the event that any such land is occupied by a lessee, such lessee shall be made a party to the suit, and the final decree of the court shall apportion the amount of compensation received between the lessee and the owner of such lands, such decree being subject to the right of appeal of any party in interest.

History: En. Sec. 1, Ch. 89, L. 1907; re-en. Secs. 7354, 7355, Rev. C. 1907; re-en. Secs. 9957, 9958, R.C.M. 1921; re-en. Secs. 9957, 9958, R.C.M. 1935; R.C.M. 1947, 93-9925, 93-9926.

70-30-110. Survey and location of property to be taken — greatest public good — least private injury. In all cases where land is required for public use, the state or its agents in charge of such use may survey and locate the same, but it must be located in the manner which will be most compatible with the greatest public good and the least private injury and subject to the provisions of 70-30-206. The state or its agents in charge of such public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land except from injuries resulting from negligence, wantonness, or malice. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of his land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of such information furnish written notice to such persons.

History: En. Sec. 584, p. 191, L. 1877; re-en. Sec. 584, 1st Div. Rev. Stat. 1879; re-en. Sec. 602, 1st Div. Comp. Stat. 1887; re-en. Sec. 2215, C. Civ. Proc. 1895; re-en. Sec. 7335, Rev. C. 1907; re-en. Sec. 9938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1242; re-en. Sec. 9938, R.C.M. 1935; R.C.M. 1947, 93-9906; amd. Sec. 1, Ch. 666, L. 1985.

70-30-111. Facts necessary to be found before condemnation. Before property can be taken, the plaintiff must show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

(1) that the use to which it is to be applied is a use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;

(4) that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1241; re-en. Sec. 9937, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-9905(part); amd. Sec. 2, Ch. 622, L. 1983.

Part 2

Preliminary Procedure

70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of Titles 25 and 26, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence, are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

History: En. Sec. 2231, C. Civ. Proc. 1895; re-en. Sec. 7351, Rev. C. 1907; re-en. Sec. 9954, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1256; re-en. Sec. 9954, R.C.M. 1935; R.C.M. 1947, 93-9922; amd. Sec. 26, Ch. 115, L. 1979; amd. Sec. 3, Ch. 622, L. 1983.

Cross-References

Montana Rules of Civil Procedure incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

70-30-202. Jurisdiction and venue — complaint and summons required. All proceedings under this chapter must be brought in the district court of the county in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon. A summons served under this chapter must contain a notice to the defendant to file and serve an answer. Within 6 months from the date the summons is served, unless the court shortens or enlarges that time for good cause, the court, sitting without a jury, shall commence its trial on the issue of whether a preliminary condemnation order should be issued.

History: En. Sec. 585, p. 191, L. 1877; re-en. Sec. 585, 1st Div. Rev. Stat. 1879; re-en. Sec. 603, 1st Div. Comp. Stat. 1887; re-en. Sec. 2216, C. Civ. Proc. 1895; re-en. Sec. 7336,

Rev. C. 1907; re-en. Sec. 9939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1243; re-en. Sec. 9939, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1937; R.C.M. 1947, 93-9907; amd. Sec. 4, Ch. 622, L. 1983.

70-30-203. Contents of complaint. The complaint must allege:

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) statements of each of the facts necessary to be found in 70-30-111;

(5) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

(6) a description of each interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(7) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304.

History: En. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1244; re-en. Sec. 9940, R.C.M. 1935; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955; amd. Sec. 1, Ch. 197, L. 1973; amd. Sec. 206, Ch. 253, L. 1974; R.C.M. 1947, 93-9908; amd. Sec. 20, Ch. 526, L. 1983; amd. Sec. 5, Ch. 622, L. 1983; amd. Sec. 2, Ch. 666, L. 1985.

70-30-204. Repealed. Sec. 12, Ch. 622, L. 1983.

History: En. Sec. 587, p. 192, L. 1877; re-en. Sec. 587, 1st Div. Rev. Stat. 1879; re-en. Sec. 605, 1st Div. Comp. Stat. 1887; amd. Sec. 2218, C. Civ. Proc. 1895; re-en. Sec. 7338, Rev. C. 1907; re-en. Sec. 9941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1245; re-en. Sec. 9941, R.C.M. 1935; amd. Sec. 9, Ch. 259, L. 1955; amd. Sec. 1, Ch. 234, L. 1961; R.C.M. 1947, 93-9909.

70-30-205. Repealed. Sec. 12, Ch. 622, L. 1983.

History: En. Sec. 588, p. 192, L. 1877; re-en. Sec. 588, 1st Div. Rev. Stat. 1879; re-en. Sec. 606, 1st Div. Comp. Stat. 1887; amd. Sec. 2219, C. Civ. Proc. 1895; re-en. Sec. 7339, Rev. C. 1907; re-en. Sec. 9942, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1246; re-en. Sec. 9942, R.C.M. 1935; amd. Sec. 2, Ch. 234, L. 1961; R.C.M. 1947, 93-9910.

70-30-206. Powers of court — preliminary condemnation order. (1) The court has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) limit the interest in real property sought to be appropriated if in the opinion of the court the interest sought is not necessary.

(2) If the court finds and concludes from the evidence presented that the public interest requires the taking of such interest in real property and that the plaintiff has met his burden of proof under 70-30-111, it must forthwith make and enter a preliminary condemnation order that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the underground gas storage reservoir and for the use in connection with the creation, operation, and maintenance thereof and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property. However, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas. The court shall appoint three persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated, and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.

(4) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration. The preliminary condemnation proceeding shall be tried by the court sitting without a jury.

History: En. Sec. 589, p. 193, L. 1877; re-en. Sec. 589, 1st Div. Rev. Stat. 1879; re-en. Sec. 607, 1st Div. Comp. Stat. 1887; amd. Sec. 2220, C. Civ. Proc. 1895; re-en. Sec. 7340,

Rev. C. 1907; re-en. Sec. 9943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1247; re-en. Sec. 9943, R.C.M. 1935; amd. Sec. 4, Ch. 245, L. 1953; amd. Sec. 10, Ch. 259, L. 1955; amd. Sec. 3, Ch. 234, L. 1961; amd. Sec. 207, Ch. 253, L. 1974; R.C.M. 1947, 93-9911; amd. Sec. 6, Ch. 622, L. 1983.

70-30-207. Appointment of commissioners — affidavit — compensation. (1) Within 30 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court must appoint condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) that he is possessed of sufficient knowledge of the English language;

(b) that he is a resident of a county within the judicial district in which the action is pending;

(c) that he is not related within the sixth degree to any party; and

(d) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

(5) The court shall specify the compensation of the condemnation commissioners, which may not exceed $250 a hearing day, including expenses. The condemning party shall pay the compensation of the commissioners nominated.

History: En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1248; re-en. Sec. 9944, R.C.M. 1935; amd. Sec. 4, Ch. 234, L. 1961;

amd. Sec. 19, Ch. 423, L. 1971; R.C.M. 1947, 93-9912(part); amd. Sec. 1, Ch. 8, L. 1979; amd. Sec. 1, Ch. 122, L. 1983; amd. Sec. 7, Ch. 622, L. 1983; amd. Sec. 3, Ch. 666, L. 1985.

Part 3

Hearing, Judgment, and Subsequent Proceedings

70-30-301. Hearing — judge to preside — determinations by commissioners. (1) Immediately upon nomination and appointment of commissioners under 70-30-207, the same shall proceed to meet at the time and place stated in the order appointing them, which time shall not be more than 10 days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said 10-day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land.

(2) Such hearing shall be attended by and presided over by the presiding judge, who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the following:

(a) the current fair market value of the property sought to be appropriated and all improvements thereon pertaining to the realty and of each and every separate estate and interest therein. If it consists of different parcels, the current fair market value of each parcel and each estate or interest therein must be separately assessed.

(b) if the property sought to be appropriated constitutes only a part of a larger parcel, the depreciation in current fair market value which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvements in the manner proposed by the plaintiff;

(c) separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and if the benefit shall be equal to the amount assessed under subsection (3)(b), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the amount assessed under subsection (3)(b), the former shall be deducted from the latter, and the remainder shall be the only amount allowed in addition to the current fair market value;

(d) if the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad and the cost of cattle guards where fences may cross the line of such railroad.

(4) Where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein. Thereafter in the same proceeding the respective rights of each of such defendants in and to the

award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.

History: En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1248; re-en. Sec. 9944, R.C.M. 1935; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971; R.C.M. 1947, 93-9912(part); amd. Sec. 1, Ch. 531, L. 1981.

70-30-302. Assessing compensation — date and measure — interest. (1) For the purpose of assessing compensation, the right thereto shall be deemed to have accrued at the date of the service of the summons, and its current fair market value as of that date shall be the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of transportation under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order be made letting the plaintiff into possession, as provided in 70-30-311, the full amount finally awarded shall draw interest at the rate of 10% per annum from the date of the service of the summons to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if appeal is filed, to the date of final decision by the supreme court; or

(b) the date on which the property owner withdraws from court the full amount finally awarded.

(3) If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (2)(a) and (2)(b) of this section until the full amount is withdrawn from the court.

(4) None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires.

(5) No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or depreciation in current fair market value, nor shall the same be used as the basis of computing such compensation or depreciation.

History: En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1249; re-en. Sec. 9945, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965; amd. Sec. 1, Ch. 187, L. 1867; amd. Sec. 12, Ch. 212, L. 1969; amd. Sec. 208, Ch. 316, L. 1974; amd. Sec. 1, Ch. 534, L. 1975; R.C.M. 1947, 93-9913; amd. Sec. 1, Ch. 257, L. 1981; amd. Sec. 2, Ch. 531, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.

70-30-303. Final report and award of commissioners — procedure on failure to agree. (1) The report of commissioners shall be made on such forms as are provided for their use by authority of the court. The report must be filed within 10 days after the completion of the hearing or within such additional time as allowed by the judge upon a clear showing of necessity and must be filed with the clerk of court. The clerk shall notify the parties interested that the report has been filed, which notice, together with a true copy of the report, must be served upon all the parties interested in the same manner as a summons.

(2) A concurrence of two commissioners is necessary to the making of a final report or award as to any parcel of property or interest therein. If no two of the commissioners are able to agree as to the amount of any award, they shall report the fact to the judge or court within the time herein specified and the court shall forthwith impanel and appoint new commissioners as herein provided, which commissioners shall proceed as provided herein to determine any award upon which the previous commissioners failed to agree.

(3) The report of the commissioners shall also state the number of days or portions thereof consumed by the commissioners in performance of their duties as prescribed herein.

History: En. Sec. 2223, C. Civ. Proc. 1895; re-en. Sec. 7343, Rev. C. 1907; re-en. Sec. 9946, R.C.M. 1921; re-en. Sec. 9946, R.C.M. 1935; amd. Sec. 6, Ch. 234, L. 1961; R.C.M. 1947, 93-9914; amd. Sec. 27, Ch. 115, L. 1979.

70-30-304. Appeal to district court from assessment of commissioners. (1) An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of said commissioners is filed by any party interested. Such appeal must be taken within the period of 30 days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the opposing party or his attorney in such proceedings and the filing of the same in the district court wherein the action is pending, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the amount to which appellant may be entitled, by reason of the appropriation of his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such amount by commissioners.

(2) Upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interests and costs allowed by law, if any, the right to construct and maintain the highway, railroad, or other public work or improvement and to take, use, and appropriate the property described in such verdict or assessment for the use and purposes for which said land has been condemned shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff and his or its heirs, successors, or assigns forever.

(3) In case the party appealing from the award of the commissioners in any proceeding, as aforesaid, shall not succeed in changing to his advantage the amount finally awarded in such proceeding, he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant; provided, that upon the trial of such appeal, the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in said appeal, which was located after the preliminary survey of any such highway or railroad, seeking to condemn its right-of-way under and pursuant to the provisions of this chapter, provided such condemnation proceedings are begun within 1 year after such preliminary survey.

History: **En. Sec. 608, p. 220, L. 1887; re-en. Sec. 2224, C. Civ. Proc. 1895; re-en. Sec. 7344, Rev. C. 1907; re-en. Sec. 9947, R.C.M. 1921; amd. Sec. 1, Ch. 145, L. 1927; re-en. Sec. 9947, R.C.M. 1935; amd. Sec. 7, Ch. 234, L. 1961; R.C.M. 1947, 93-9915.**

70-30-305. Condemnor to make offer upon appeal — award of expenses of litigation. (1) The condemnor shall, within 30 days after an appeal is perfected from the commissioner's award or report or not more than 60 days after waiver of appointment of condemnation commissioners, submit to condemnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnee then accrued. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the private property owner prevails by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee.

History: **En. 93-9921.1 by Sec. 1, Ch. 453, L. 1973; R.C.M. 1947, 93-9921.1; amd. Sec. 2, Ch. 8, L. 1979.**

70-30-306. Necessary expenses of litigation defined. (1) Necessary expenses of litigation as authorized by 70-30-305 mean reasonable and necessary attorney fees, expert witness fees, exhibit costs, and court costs.

(2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's services in the county in which trial is held. Reasonable and necessary attorney fees shall be computed on an hourly basis and may not be computed on the basis of any contingent fee contract entered into after July 1, 1977.

(3) Reasonable and necessary expert witness fees may not exceed the customary rate for the services of a witness of such expertise in the county in which trial is held.

History: **En. 93-9921.2 by Sec. 1, Ch. 48, L. 1977; R.C.M. 1947, 93-9921.2.**

70-30-307. When payment of compensation to be made — deposit of bond. The plaintiff must within 30 days after final judgment pay the sum of money assessed but may at the time of or before the payment elect to build the fences and cattle guards and, if he so elect, shall execute to the defendant a bond with sureties to be approved by the court, in double the assessed cost of the same, to build such fences and cattle guards within 8 months from the time the railroad is built on the land taken and, if such bond be given, need not pay the cost of such fences and cattle guards. In an action on such bond, the plaintiff may recover reasonable attorney's fees.

History: **En. Sec. 593, p. 194, L. 1877; re-en. Sec. 593, 1st Div. Rev. Stat. 1879; re-en. Sec. 611, 1st Div. Comp. Stat. 1887; amd. Sec. 2226, C. Civ. Proc. 1895; re-en. Sec. 7346, Rev. C. 1907; re-en. Sec. 9949, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1251; re-en. Sec. 9949, R.C.M. 1935; R.C.M. 1947, 93-9917.**

70-30-308. How payment made — execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) on an annual basis, utilizing the installment contract method; or

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned.

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff.

History: En. Sec. 594, p. 194, L. 1877; re-en. Sec. 594, 1st Div. Rev. Stat. 1879; re-en. Sec. 612, 1st Div. Comp. Stat. 1887; re-en. Sec. 2227, C. Civ. Proc. 1895; re-en. Sec. 7347, Rev. C. 1907; re-en. Sec. 9950, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1252; re-en. Sec. 9950, R.C.M. 1935; R.C.M. 1947, 93-9918; amd. Sec. 3, Ch. 531, L. 1981; amd. Sec. 8, Ch. 622, L. 1983.

70-30-309. Final order of condemnation — contents — vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

History: En. Sec. 595, p. 195, L. 1877; re-en. Sec. 595, 1st Div. Rev. Stat. 1879; re-en. Sec. 613, 1st Div. Comp. Stat. 1887; re-en. Sec. 2228, C. Civ. Proc. 1895; re-en. Sec. 7348, Rev. C. 1907; re-en. Sec. 9951, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1253; re-en. Sec. 9951, R.C.M. 1935; R.C.M. 1947, 93-9919; amd. Sec. 9, Ch. 622, L. 1983.

70-30-310. New proceedings to cure defective title. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed.

History: En. Sec. 592, p. 194, L. 1877; re-en. Sec. 592, 1st Div. Rev. Stat. 1879; re-en. Sec. 610, 1st Div. Comp. Stat. 1887; re-en. Sec. 2225, C. Civ. Proc. 1895; re-en. Sec. 7345, Rev. C. 1907; re-en. Sec. 9948, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1250; re-en. Sec. 9948, R.C.M. 1935; R.C.M. 1947, 93-9916.

70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his statement of claim of just compensation under 70-30-207 or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the plaintiff on account thereof be stayed until such time.

(2) If the defendant fails to file a statement of claim of just compensation within the time specified in 70-30-207, the plaintiff may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim.

(3) However, where an appeal is taken by such defendant, the court may, in its discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the court and to be in such sum as the court may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

(4) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than 75% of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings.

History: **En. Sec. 596, p. 195, L. 1877; re-en. Sec. 596, 1st Div. Rev. Stat. 1879; amd. Sec. 614, 1st Div. Comp. Stat. 1887; amd. Sec. 2, p. 272, L. 1891; en. Sec. 2229, C. Civ. Proc. 1895; re-en. Sec. 7349, Rev. C. 1907; re-en. Sec. 9952, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1254; re-en. Sec. 9952, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1961; R.C.M. 1947, 93-9920; amd. Sec. 10, Ch. 622, L. 1983.**

70-30-312. Appeal to supreme court. (1) The plaintiff or defendant or any party interested in the proceedings can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases.

(2) Such appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for such period of time and under such conditions as the court deems proper.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1241; re-en. Sec. 9937, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-9905(part).

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best reasonably available use and its value for such use, provided current use may not be presumed to be the highest and best use;

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered.

History: En. Sec. 4, Ch. 531, L. 1981; amd. Sec. 11, Ch. 622, L. 1983.

70-30-314. Weed control responsibility. The plaintiff, upon taking possession of the land, is responsible for the control and destruction of noxious weeds on such land until natural grasses have taken over the property and noxious weeds have ceased to exist.

History: En. Sec. 5, Ch. 531, L. 1981.

Cross-References

Weed control, Title 80, ch. 7, part 7.

70-30-315. Proration of taxes. The plaintiff shall be assessed his pro rata share of taxes for the land being condemned as of the date of possession or summons, whichever occurs first. The plaintiff shall be assessed for all taxes accruing after the date of possession or summons, whichever occurs first.

History: En. Sec. 6, Ch. 531, L. 1981.

70-30-316 through 70-30-320 reserved.

70-30-321. Sale of property acquired for public use when use abandoned — procedure. (1) Except as provided in subsection (3), whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons such public use and places such interest for sale, the seller may sell the interest to the highest bidder at public auction.

(2) In the event the seller decides to sell an interest in real property as set forth in subsection (1), he shall publish notice of the public sale in a newspaper published in the county in which the real property interest is located once a week for 4 successive weeks. Sale shall be held in the county where the real property interest is located. The notice of sale shall contain the information required by 77-2-322.

(3) When an interest other than a fee simple interest in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or his successor in interest.

History: En. Sec. 1, Ch. 440, L. 1981; amd. Sec. 1, Ch. 689, L. 1983.

70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or, if there is a successor in interest, the owner or his successor in interest shall be notified by the seller by certified mail and shall have a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If no bids are received by the seller and the optionholder indicates in writing to the seller that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

(3) When an interest other than a fee simple interest in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or his successor in interest.

History: En. Sec. 2, Ch. 440, L. 1981; amd. Sec. 2, Ch. 689, L. 1983; amd. Sec. 4, Ch. 666, L. 1985.

CHAPTER 31

RELOCATION ASSISTANCE FAIR TREATMENT OF CONDEMNEES

Part 1 — General Provisions

70-31-101. Purpose.
70-31-102. Definitions.
70-31-103. Application to all federally assisted programs.
70-31-104. New rights and powers not created.
70-31-105. Duplication of eminent domain payments not intended.
70-31-106. Payments not income under tax laws or other assistance laws.
70-31-107 through 70-31-110 reserved.
70-31-111. Rulemaking authority.

Part 2 — Relocation Payments, Assistance, and Advisory Services

(Repealed. Sec. 6, Ch. 374, L. 1989)

Part 3 — Rights and Duties Relating to Condemnation

70-31-301. Appraisal, negotiation, and other condemnation policies mandated.
70-31-302. Reimbursement of closing costs and taxes incurred by owner.
70-31-303. Inverse condemnation — reimbursement of expenses of proceeding.
70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned.
70-31-305. Acquisition of buildings and improvements affected.
70-31-306 through 70-31-310 reserved.
70-31-311. Relocation payments and assistance.

Part 1

General Provisions

70-31-101. Purpose. It is the purpose of this chapter to:

(1) provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of federally assisted programs;

(2) establish uniform and equitable land acquisition policies for federally assisted programs; and

(3) comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

History: En. Sec. 1, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9927; amd. Sec. 1, Ch. 374, L. 1989.

70-31-102. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Agency" means any department, agency, or instrumentality of the state of Montana or of a political subdivision of the state, any department, agency, or instrumentality of two or more states or two or more political subdivisions of the state or of two or more states, and any person who has the authority to acquire property by eminent domain under state law.

(2) "Appraisal" means a written statement, independently and impartially prepared by a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specified date and supported by the presentation and analysis of relevant market information.

(3) "Average annual net earnings" means one-half of any net earnings of a business or farm operation, before federal and state income taxes, during the 2 taxable years immediately preceding the taxable year in which the business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during any other period that the acquiring agency determines to be more equitable for establishing earnings and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during the period.

(4) "Business" means any lawful activity, excepting a farm operation, conducted:

(a) primarily for the purchase, sale, lease, and rental of personal and real property and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) primarily for the sale of services to the public;

(c) primarily by a nonprofit organization; or

(d) solely for the purposes of paying moving or related expenses, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the above activities are conducted.

(5) (a) "Displaced person" means:

(i) any person who moves from real property or moves his personal property from real property:

(A) as a direct result of a written notice of intent to acquire or by the acquisition of the real property, in whole or in part, for a program or project undertaken by a displacing agency for which federal financial assistance will be available to pay all or any part of the cost; or

(B) on which he is a residential tenant or conducts a small business, farm operation, or a business defined in subsection (4)(d), as a direct result of rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent and for which federal financial assistance will be available to pay all or any part of the cost;

(ii) any person who, for purposes of providing moving and related expenses or relocation advisory services only, moves from real property or moves his personal property from real property as a direct result of:

(A) a written notice of intent to acquire or as a direct result of the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(B) the rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent.

(b) The term "displaced person" does not include a person who:

(i) has been determined, according to criteria established by the agency, to be either unlawfully occupying the displacement dwelling or to have been occupying the dwelling for the purpose of obtaining assistance under this part; or

(ii) occupies property owned by the agency on a short-term rental basis or for a period subject to termination when the property is needed for the program or project and who was not an occupant of the property at the time it was acquired by the agency.

(6) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" or as that act may be amended.

(8) "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

(9) "Person" means any individual, partnership, corporation, or association.

History: En. Sec. 2, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9928; amd. Sec. 2, Ch. 374, L. 1989.

70-31-103. Application to all federally assisted programs. This chapter shall apply to all acquisitions of real property by an agency for a program or project for which federal financial assistance is available to pay all or any part of the cost.

History: En. Sec. 18, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9944.

70-31-104. New rights and powers not created. (1) Nothing in this chapter shall be construed as creating, in any condemnation proceedings brought under the power of eminent domain, any element of value or damage not in existence immediately prior to July 1, 1971.

(2) Nothing in this chapter shall be construed as, directly or indirectly, granting any new or additional power of eminent domain.

History: En. Sec. 17, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9943(2), (3).

70-31-105. Duplication of eminent domain payments not intended. No payment or assistance provided for in this chapter shall be required to be made by an agency if the displaced person receives a payment required by the laws of eminent domain which is determined by the agency to have substantially the same purpose and effect as such payment under this chapter.

History: En. Sec. 16, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9942.

70-31-106. Payments not income under tax laws or other assistance laws. No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility of any person for assistance under any state law or for the purposes of determining income under state tax laws.

History: En. Sec. 9, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9935.

70-31-107 through 70-31-110 reserved.

70-31-111. Rulemaking authority. An agency, as defined in 2-3-102, is authorized to adopt necessary rules to implement this chapter.

History: En. Sec. 4, Ch. 374, L. 1989.

Part 2

Relocation Payments, Assistance, and Advisory Services

(Repealed. Sec. 6, Ch. 374, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

70-31-201. En. Sec. 3, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9929.

70-31-202. En. Sec. 4, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9930.

70-31-203. En. Sec. 5, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9931.

70-31-204. En. Sec. 6, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9932.

70-31-205. En. Secs. 7, 17, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9933, 93-9943(1).

70-31-206. En. Sec. 8, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9934.

70-31-207. En. Sec. 10, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9936.

Part 3

Rights and Duties Relating to Condemnation

70-31-301. Appraisal, negotiation, and other condemnation policies mandated. An agency which acquires real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of such program or project) shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property. The head of the agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of and summary of the basis for the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the uneconomic remnant shall be made.

(10) A person whose real property is being acquired may, after being fully informed of his right to receive just compensation, donate to an agency the

property, any interest in the property, or any compensation received for the property.

History: **En. Sec. 11, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9937; amd. Sec. 5, Ch. 374, L. 1989.**

70-31-302. Reimbursement of closing costs and taxes incurred by owner. Any agency acquiring real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner to the extent the acquiring agency deems fair and reasonable for:

(1) expenses he necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;

(2) penalty costs for prepayment for any preexisting recorded mortgage or deed of trust entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

History: **En. Sec. 12, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9938.**

70-31-303. Inverse condemnation — reimbursement of expenses of proceeding. Where an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of his property for any program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project), the court rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property or attorney for the acquiring agency effecting a settlement of any such proceeding shall determine and award or allow to such plaintiff as a part of such judgment or settlement such sum as will, in the opinion of the court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses including reasonable attorney, appraisal, and engineering fees actually incurred because of such proceeding.

History: **En. Sec. 14, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9940.**

70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned. Where a condemnation proceeding is instituted by an agency to acquire real property for a program or project (for which federal financial assistance is available) and the final judgment is that the real property cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for his reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings. The award of such sums will be paid by the agency which sought to condemn the property.

History: **En. Sec. 13, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9939.**

70-31-305. Acquisition of buildings and improvements affected. (1) Where any interest in real property is acquired for a program or project (for which federal assistance will be available to pay all or any part of the cost of the program or project), the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which are required to be removed from such real property or which the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term; and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(3) Payment for such buildings, structures, or improvements as set forth in subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all his right, title, and interest in and to such improvements. Nothing in this subsection or subsection (2) shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of the state.

History: En. Sec. 15, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9941.

70-31-306 through 70-31-310 reserved.

70-31-311. Relocation payments and assistance. For any project that results in the displacement of a person from his home, business, or farm and for which federal financial assistance may be available to pay all or any part of the cost of displacement, an entity of the state or any public or private entity that has the authority to acquire property by eminent domain under state law is authorized to provide relocation assistance and to make relocation payments to the full extent permitted by the federal relocation assistance law, 42 U.S.C. 4601, et seq., as amended. The entity is authorized to do what may be necessary or required to obtain for property owners the full benefit of federal relocation assistance, including the adoption of methods of administration as may be required by federal law or rules to carry out the operation of relocation assistance.

History: En. Sec. 3, Ch. 374, L. 1989.

CHAPTER 32

HOMESTEADS

Part 1 — Establishment of the Homestead

70-32-101. Of what homestead consists.
70-32-102. Repealed.
70-32-103. From whose property homestead may be selected.
70-32-104. Limitation on value.
70-32-105. Mode of selection — declaration required.
70-32-106. Contents of declaration.
70-32-107. Declaration to be recorded.

Part 2 — Homestead Exemption—Execution

70-32-201. Homestead exempt from execution generally.
70-32-202. Execution allowed under certain judgments.
70-32-203. Execution under judgments not enumerated — application required.
70-32-204. Application for appraisal — contents — filing.
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70-32-210. Sale when land cannot be divided.
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70-32-215. Costs.
70-32-216. Tracing homestead proceeds.
70-32-217 through 70-32-220 reserved.
70-32-221. Homestead subject to execution for certain judgments — separate acknowledgment required.

Part 3 — Conveyance, Encumbrance, and Abandonment of Homestead

70-32-301. How conveyed or encumbered — instrument.
70-32-302. How abandoned — declaration.
70-32-303. When declaration effective.

Chapter Cross-References

Exemption laws, Art. XIII, sec. 5, Mont. Const.

Residential property tax credit for elderly, 15-30-171 through 15-30-179.

Homestead exempt from execution, 25-13-615.

Exempt property — bankruptcy proceeding, 31-2-106.

UPC — homestead allowance, 72-2-412.

UPC — exempt property, 72-2-413.

UPC — family allowance, 72-2-414.

Part 1

Establishment of the Homestead

70-32-101. Of what homestead consists. The homestead consists of the dwelling house or mobile home, and all appurtenances, in which the claimant resides and the land, if any, on which the same is situated, selected as provided in this chapter.

History: **En. Sec. 1670, Civ. C. 1895; re-en. Sec. 4694, Rev. C. 1907; re-en. Sec. 6945, R.C.M. 1921; Cal. Civ. C. Sec. 1237; re-en. Sec. 6945, R.C.M. 1935; R.C.M. 1947, 33-101; amd. Sec. 1, Ch. 370, L. 1981.**

70-32-102. Repealed. Sec. 9, Ch. 370, L. 1981.

History: **En. Sec. 1694, Civ. C. 1895; re-en. Sec. 4718, Rev. C. 1907; re-en. Sec. 6969, R.C.M. 1921; Cal. Civ. C. Sec. 1261; amd. Sec. 1, Ch. 86, L. 1925; re-en. Sec. 6969, R.C.M. 1935; amd. Sec. 3, Ch. 1, L. 1975; R.C.M. 1947, 33-125.**

70-32-103. From whose property homestead may be selected. If the claimant be married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of his or her property.

History: **En. Sec. 1671, Civ. C. 1895; re-en. Sec. 4695, Rev. C. 1907; re-en. Sec. 6946, R.C.M. 1921; Cal. Civ. C. Sec. 1238; re-en. Sec. 6946, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1975; R.C.M. 1947, 33-102; amd. Sec. 2, Ch. 370, L. 1981.**

70-32-104. Limitation on value. (1) A homestead may not exceed in value $60,000. In a proceeding instituted to determine the value of the homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last-completed assessment roll preceding the institution of the proceeding is prima facie evidence of the value of the property claimed as a homestead.

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, the claimant is limited to an exemption amount proportional to the claimant's undivided interest.

History: **En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R.C.M. 1921; Cal. Civ. C. Sec. 1260; amd. Sec. 1, Ch. 126, L. 1931; re-en. Sec. 6968, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965; amd. Sec. 1, Ch. 300, L. 1973; R.C.M. 1947, 33-124; amd. Sec. 3, Ch. 370, L. 1981; amd. Sec. 8, Ch. 302, L. 1987; amd. Sec. 1, Ch. 30, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 30 in (1), near beginning, increased homestead exemption value from $40,000 to $60,000; and made minor changes in style.

Applicability: Section 2, Ch. 30, L. 1997, provided: "[Section 1] [70-32-104] applies to judgments obtained and bankruptcy proceedings begun after October 1, 1997."

70-32-105. Mode of selection — declaration required. The person selecting a homestead must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead and file the same for record.

History: **En. Sec. 1700, Civ. C. 1895; re-en. Sec. 4719, Rev. C. 1907; re-en. Sec. 6970, R.C.M. 1921; Cal. Civ. C. Sec. 1262; re-en. Sec. 6970, R.C.M. 1935; amd. Sec. 4, Ch. 1, L. 1975; R.C.M. 1947, 33-126; amd. Sec. 4, Ch. 370, L. 1981.**

70-32-106. Contents of declaration. The declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises.

History: **En. Sec. 1701, Civ. C. 1895; re-en. Sec. 4720, Rev. C. 1907; re-en. Sec. 6971, R.C.M. 1921; Cal. Civ. C. Sec. 1263; re-en. Sec. 6971, R.C.M. 1935; amd. Sec. 5, Ch. 1, L. 1975; R.C.M. 1947, 33-127; amd. Sec. 5, Ch. 370, L. 1981.**

70-32-107. Declaration to be recorded. The declaration must be recorded in the office of the county clerk of the county in which the land is situated.

History: **En. Sec. 1702, Civ. C. 1895; re-en. Sec. 4721, Rev. C. 1907; re-en. Sec. 6972, R.C.M. 1921; Cal. Civ. C. Sec. 1264; re-en. Sec. 6972, R.C.M. 1935; R.C.M. 1947, 33-128.**

Part 2

Homestead Exemption — Execution

70-32-201. Homestead exempt from execution generally. The homestead is exempt from execution or forced sale, except as in this chapter provided.

History: En. Sec. 1673, Civ. C. 1895; re-en. Sec. 4697, Rev. C. 1907; re-en. Sec. 6948, R.C.M. 1921; Cal. Civ. C. Sec. 1240; re-en. Sec. 6948, R.C.M. 1935; R.C.M. 1947, 33-104.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Exempt property — bankruptcy proceeding, 31-2-106.

70-32-202. Execution allowed under certain judgments. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

(1) on debts secured by construction or vendors' liens upon the premises;

(2) on debts secured by mortgages on the premises, executed and acknowledged by the husband and wife or by an unmarried claimant; or

(3) on debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.

History: En. Sec. 1674, Civ. C. 1895; re-en. Sec. 4698, Rev. C. 1907; re-en. Sec. 6949, R.C.M. 1921; Cal. Civ. C. Sec. 1241; re-en. Sec. 6949, R.C.M. 1935; R.C.M. 1947, 33-105(part); amd. Sec. 6, Ch. 370, L. 1981.

70-32-203. Execution under judgments not enumerated — application required. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in 70-32-202 is levied upon the homestead, the judgment creditor may apply to the district court of the county in which the homestead is situated or a judge thereof for the appointment of persons to appraise the value thereof.

History: En. Sec. 1678, Civ. C. 1895; re-en. Sec. 4702, Rev. C. 1907; re-en. Sec. 6953, R.C.M. 1921; Cal. Civ. C. Sec. 1245; re-en. Sec. 6953, R.C.M. 1935; R.C.M. 1947, 33-109.

70-32-204. Application for appraisal — contents — filing. (1) The application must be made upon a verified petition showing:

(a) the fact that an execution has been levied upon the homestead;

(b) the name of the claimant;

(c) that the value of the homestead exceeds the amount of the homestead exemption.

(2) The petition must be filed with the clerk of the district court.

History: En. Secs. 1679, 1680, Civ. C. 1895; re-en. Secs. 4703, 4704, Rev. C. 1907; re-en. Secs. 6954, 6955, R.C.M. 1921; Cal. Civ. C. Secs. 1246, 1247; re-en. Secs. 6954, 6955, R.C.M. 1935; R.C.M. 1947, 33-110, 33-111.

70-32-205. Service of petition — notice of hearing. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant at least 2 days before the hearing.

History: En. Sec. 1681, Civ. C. 1895; re-en. Sec. 4705, Rev. C. 1907; re-en. Sec. 6956, R.C.M. 1921; Cal. Civ. C. Sec. 1248; re-en. Sec. 6956, R.C.M. 1935; R.C.M. 1947, 33-112.

70-32-206. Appointment of appraisers — oath. (1) At the hearing the judge may, upon proof of the service of a copy of the petition and notice and of the facts stated in the petition, appoint three disinterested residents and freeholders of the county to appraise the value of the homestead.

(2) The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

History: En. Secs. 1682, 1683, Civ. C. 1895; re-en. Secs. 4706, 4707, Rev. C. 1907; re-en. Secs. 6957, 6958, R.C.M. 1921; Cal. Civ. C. Secs. 1249, 1250; re-en. Secs. 6957, 6958, R.C.M. 1935; R.C.M. 1947, 33-113, 33-114.

70-32-207. Duty of appraisers. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

History: En. Sec. 1684, Civ. C. 1895; re-en. Sec. 4708, Rev. C. 1907; re-en. Sec. 6959, R.C.M. 1921; Cal. Civ. C. Sec. 1251; re-en. Sec. 6959, R.C.M. 1935; R.C.M. 1947, 33-115.

70-32-208. Report of appraisers — contents. Within 15 days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

History: En. Sec. 1685, Civ. C. 1895; re-en. Sec. 4709, Rev. C. 1907; re-en. Sec. 6960, R.C.M. 1921; Cal. Civ. C. Sec. 1252; re-en. Sec. 6960, R.C.M. 1935; R.C.M. 1947, 33-116.

70-32-209. Order dividing land — execution against remainder over exemption. If from the report it appears to the judge that the land claimed can be divided without material injury, he must by an order direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

History: En. Sec. 1686, Civ. C. 1895; re-en. Sec. 4710, Rev. C. 1907; re-en. Sec. 6961, R.C.M. 1921; Cal. Civ. C. Sec. 1253; re-en. Sec. 6961, R.C.M. 1935; R.C.M. 1947, 33-117.

70-32-210. Sale when land cannot be divided. If from the report it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption and that it cannot be divided, he must make an order directing its sale under execution.

History: En. Sec. 1687, Civ. C. 1895; re-en. Sec. 4711, Rev. C. 1907; re-en. Sec. 6962, R.C.M. 1921; Cal. Civ. C. Sec. 1254; re-en. Sec. 6962, R.C.M. 1935; R.C.M. 1947, 33-118.

70-32-211. Amount of bid. At such sale no bid must be received unless it exceeds the amount of the homestead exemption.

History: En. Sec. 1688, Civ. C. 1895; re-en. Sec. 4712, Rev. C. 1907; re-en. Sec. 6963, R.C.M. 1921; Cal. Civ. C. Sec. 1255; re-en. Sec. 6963, R.C.M. 1935; R.C.M. 1947, 33-119.

70-32-212. Application of proceeds of sale. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant and the balance applied to the satisfaction of the execution.

History: En. Sec. 1689, Civ. C. 1895; re-en. Sec. 4713, Rev. C. 1907; re-en. Sec. 6964, R.C.M. 1921; Cal. Civ. C. Sec. 1256; re-en. Sec. 6964, R.C.M. 1935; R.C.M. 1947, 33-120.

70-32-213. Sale proceeds equal to exemption protected. The money paid to the claimant is entitled, for the period of 18 months thereafter, to the same protection against legal process and the voluntary disposition of either spouse which the law gives to the homestead.

History: En. Sec. 1690, Civ. C. 1895; re-en. Sec. 4714, Rev. C. 1907; re-en. Sec. 6965, R.C.M. 1921; Cal. Civ. C. Sec. 1257; re-en. Sec. 6965, R.C.M. 1935; amd. Sec. 2, Ch. 1, L. 1975; R.C.M. 1947, 33-121; amd. Sec. 9, Ch. 302, L. 1987.

70-32-214. Compensation of appraisers. The court must fix a reasonable amount as compensation for the appraisers.

History: **En. Sec. 1691, Civ. C. 1895; re-en. Sec. 4715, Rev. C. 1907; re-en. Sec. 6966, R.C.M. 1921; Cal. Civ. C. Sec. 1258; re-en. Sec. 6966, R.C.M. 1935; R.C.M. 1947, 33-122; amd. Sec. 10, Ch. 302, L. 1987.**

70-32-215. Costs. The execution creditor must pay the costs of these proceedings in the first instance, but in the cases provided for in 70-32-209 and 70-32-210, the amount so paid must be added as costs on execution and collected accordingly.

History: **En. Sec. 1692, Civ. C. 1895; re-en. Sec. 4716, Rev. C. 1907; re-en. Sec. 6967, R.C.M. 1921; Cal. Civ. C. Sec. 1259; re-en. Sec. 6967, R.C.M. 1935; R.C.M. 1947, 33-123.**

70-32-216. Tracing homestead proceeds. (1) If property or a part thereof that could have been claimed as an exempt homestead has been sold or taken by condemnation or has been lost, damaged, or destroyed and the owner has been indemnified for it, he is entitled for 18 months to exemption of the proceeds that are traceable.

(2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

History: **En. Sec. 6, Ch. 302, L. 1987.**

Cross-References

Tracing exempt personal property, 25-13-610.

70-32-217 through 70-32-220 reserved.

70-32-221. Homestead subject to execution for certain judgments — separate acknowledgment required. (1) If a borrower borrowing money from a regulated lender, as defined in 31-1-111, or a farm credit system lender encumbers real property that otherwise would qualify as a homestead under Title 70, chapter 32, the lender shall require the borrower to sign a written statement acknowledging that the real property is not exempt from execution as a homestead because under 70-32-202 it is subject to execution or forced sale to satisfy a judgment obtained on a debt secured by a mortgage or other encumbrance on the premises. The written acknowledgment may be in a document separate from, or may be included in, the loan agreement or loan documents and must be printed in capital letters of not less than 10-point boldfaced type and signed separately by the borrower.

(2) The lender shall retain a copy of the acknowledgment provided for in subsection (1) until the mortgage or other encumbrance is paid or otherwise satisfied or discharged unless the acknowledgment is of record in the office of the clerk and recorder.

History: **En. Sec. 1, Ch. 590, L. 1987; amd. Sec. 2, Ch. 294, L. 1991.**

Cross-References

Exempt property — bankruptcy proceeding, 31-2-106.

Part 3

Conveyance, Encumbrance, and Abandonment of Homestead

70-32-301. How conveyed or encumbered — instrument. The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.

History: En. Sec. 1675, Civ. C. 1895; re-en. Sec. 4699, Rev. C. 1907; re-en. Sec. 6950, R.C.M. 1921; Cal. Civ. C. Sec. 1242; re-en. Sec. 6950, R.C.M. 1935; R.C.M. 1947, 33-106.

70-32-302. How abandoned — declaration. A homestead can be abandoned only by a declaration of abandonment or a grant thereof executed and acknowledged by:

(1) the husband and wife if the claimant is married;
(2) the claimant if unmarried.

History: En. Sec. 1676, Civ. C. 1895; re-en. Sec. 4700, Rev. C. 1907; re-en. Sec. 6951, R.C.M. 1921; Cal. Civ. C. Sec. 1243; re-en. Sec. 6951, R.C.M. 1935; R.C.M. 1947, 33-107.

70-32-303. When declaration effective. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

History: En. Sec. 1677, Civ. C. 1895; re-en. Sec. 4701, Rev. C. 1907; re-en. Sec. 6952, R.C.M. 1921; Cal. Civ. C. Sec. 1244; re-en. Sec. 6952, R.C.M. 1935; R.C.M. 1947, 33-108.

TITLE 71

MORTGAGES, PLEDGES, AND LIENS

Ch.
1. Mortgages.
2. Pledges.
3. Liens.

CHAPTER 1

MORTGAGES

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Part 1
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Montana Title Insurance Act, Title 33, ch. 25.

71-1-101. Definition. "Mortgage" is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

History: En. Sec. 3810, Civ. C. 1895; re-en. Sec. 5731, Rev. C. 1907; re-en. Sec. 8246, R.C.M. 1921; Cal. Civ. C. Sec. 2920; Field Civ. C. Sec. 1608; re-en. Sec. 8246, R.C.M. 1935; R.C.M. 1947, 52-101.

Cross-References

"Mortgage" used in reference to security interest in personal property to include security interest under U.C.C., 1-1-205.

Security interest defined, 30-1-201.

71-1-102. Power of attorney to execute. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

History: En. Sec. 3822, Civ. C. 1895; re-en. Sec. 5743, Rev. C. 1907; re-en. Sec. 8258, R.C.M. 1921; Cal. Civ. C. Sec. 2933; re-en. Sec. 8258, R.C.M. 1935; R.C.M. 1947, 52-113.

Cross-References

Discharge or release by other than mortgagee, 71-1-213.

Powers of attorney, Title 72, ch. 5, part 5.

71-1-103. Mortgage a special lien — on what a lien. (1) The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

(2) A mortgage is a lien upon everything that would pass by a grant of the property.

History: (1)En. Sec. 3812, Civ. C. 1895; re-en. Sec. 5733, Rev. C. 1907; re-en. Sec. 8248, R.C.M. 1921; Cal. Civ. C. Sec. 2923; Field Civ. C. Sec. 1609; re-en. Sec. 8248, R.C.M. 1935; Sec. 52-103, R.C.M. 1947; (2)En. Sec. 3815, Civ. C. 1895; re-en. Sec. 5736, Rev. C. 1907; re-en. Sec. 8251, R.C.M. 1921; Cal. Civ. C. Sec. 2926; Based on Field Civ. C. Sec. 1617; re-en. Sec. 8251, R.C.M. 1935; Sec. 52-106, R.C.M. 1947; R.C.M. 1947, 52-103, 52-106.

Cross-References

Liens, Title 71, ch. 3.

71-1-104. Mortgage not a personal obligation. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security unless there is an express covenant therein to that effect.

History: En. Sec. 3817, Civ. C. 1895; re-en. Sec. 5738, Rev. C. 1907; re-en. Sec. 8253, R.C.M. 1921; Cal. Civ. C. Sec. 2928; re-en. Sec. 8253, R.C.M. 1935; R.C.M. 1947, 52-108.

Cross-References

Defendants personally liable — foreclosure proceedings, 71-1-222.

71-1-105. Mortgagee not entitled to possession. A mortgage does not entitle the mortgagee to the possession of the property unless authorized by the express terms of the mortgage, but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

History: En. Sec. 3816, Civ. C. 1895; re-en. Sec. 5737, Rev. C. 1907; re-en. Sec. 8252, R.C.M. 1921; Cal. Civ. C. Sec. 2927; Based on Field Civ. C. Sec. 1620; re-en. Sec. 8252, R.C.M. 1935; R.C.M. 1947, 52-107.

71-1-106. Waste prohibited. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

History: En. Sec. 3818, Civ. C. 1895; re-en. Sec. 5739, Rev. C. 1907; re-en. Sec. 8254, R.C.M. 1921; Cal. Civ. C. Sec. 2929; re-en. Sec. 8254, R.C.M. 1935; R.C.M. 1947, 52-109.

Cross-References

Injunction to prevent injury to property, 71-1-227.

71-1-107. Transfers of interest. (1) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.

(2) The fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

History: (1)En. Sec. 3813, Civ. C. 1895; re-en. Sec. 5734, Rev. C. 1907; re-en. Sec. 8249, R.C.M. 1921; Cal. Civ. C. Sec. 2924; Based on Field Civ. C. Sec. 1610; re-en. Sec. 8249, R.C.M. 1935; Sec. 52-104, R.C.M. 1947; (2)En. Sec. 3814, Civ. C. 1895; re-en. Sec. 5735, Rev. C. 1907; re-en. Sec. 8250, R.C.M. 1921; Cal. Civ. C. Sec. 2925; Field Civ. C. Sec. 1612; re-en. Sec. 8250, R.C.M. 1935; Sec. 52-105, R.C.M. 1947; R.C.M. 1947, 52-104, 52-105.

71-1-108. Subsequently acquired title. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

History: En. Sec. 3819, Civ. C. 1895; re-en. Sec. 5740, Rev. C. 1907; re-en. Sec. 8255, R.C.M. 1921; Cal. Civ. C. Sec. 2930; re-en. Sec. 8255, R.C.M. 1935; R.C.M. 1947, 52-110.

71-1-109. Mortgage of property adversely held. A mortgage may be created upon property held adversely to the mortgagor.

History: En. Sec. 3811, Civ. C. 1895; re-en. Sec. 5732, Rev. C. 1907; re-en. Sec. 8247, R.C.M. 1921; Cal. Civ. C. Sec. 2921; Field Civ. C. Sec. 1614; re-en. Sec. 8247, R.C.M. 1935; R.C.M. 1947, 52-102.

71-1-110. Passage of mortgage by assignment of debt. The assignment of a debt secured by mortgage carries with it the security.

History: En. Sec. 3825, Civ. C. 1895; re-en. Sec. 5746, Rev. C. 1907; re-en. Sec. 8261, R.C.M. 1921; Cal. Civ. C. Sec. 2936; re-en. Sec. 8261, R.C.M. 1935; R.C.M. 1947, 52-115.

71-1-111. Power of sale. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

History: En. Sec. 3821, Civ. C. 1895; re-en. Sec. 5742, Rev. C. 1907; re-en. Sec. 8257, R.C.M. 1921; Cal. Civ. C. Sec. 2932; Field Civ. C. Sec. 1615; re-en. Sec. 8257, R.C.M. 1935; R.C.M. 1947, 52-112.

Cross-References

Power of sale, 71-1-223.

71-1-112. Applicable laws. (1) In the event of conflict between any provision of this part and the Uniform Commercial Code, the latter shall govern.

(2) All mortgages and deeds of trust covering both real and personal property executed by a corporation, association, or partnership or by an individual or individuals are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned and by the Uniform Commercial Code—Secured Transactions so far as the personal property is concerned.

History: (1)En. 52-117 by Sec. 11-133, Ch. 264, L. 1963; Sec. 52-117, R.C.M. 1947; (2)En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; re-en. Sec. 8273, R.C.M. 1935; amd. Sec. 11-134, Ch. 264, L. 1963; Sec. 52-212, R.C.M. 1947; R.C.M. 1947, 52-117, 52-212.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

71-1-113. Limit on the amount of funds on reserve. Except as provided in 71-1-114, if a lending institution requires a borrower under a mortgage or trust indenture of real property to include in his regular payment additional payment into a reserve fund held by the lending institution for the future payment of property taxes, insurance premiums, and other expenses, the amount of funds on reserve may not exceed 110% of the projected amount needed to pay such expenses.

History: En. Sec. 1, Ch. 490, L. 1979.

71-1-114. Exception to limitation. If the borrower desires, the lending institution and borrower may enter into a written contract in which they agree that the funds on reserve exceed 110% of the reasonable amount needed to pay such expenses.

History: En. Sec. 2, Ch. 490, L. 1979.

71-1-115. Record of reserve fund required. Every lending institution shall keep an itemized record of each payment entered into the reserve fund and each disbursement withdrawn from the reserve fund. The lending institution shall annually mail a statement of total receipts and disbursements to each borrower under a mortgage or trust indenture of real property.

History: En. Sec. 3, Ch. 490, L. 1979.

Part 2
Mortgages of Real Property

Part Cross-References

Montana Title Insurance Act, Title 33, ch. 25.

71-1-201. What real property may be mortgaged — debts secured. Any interest in real property which is capable of being transferred may be mortgaged. Such property or interest may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage, and to secure advances then in contemplation but to be made in the future.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part).

71-1-202. Mortgage not considered conveyance — recovery of possession. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. When the mortgage confers a power of sale, as mentioned in 71-1-111, possession may be recovered according to the terms of the mortgage.

History: En. Sec. 239, p. 93, Bannack Stat.; re-en. Sec. 260, p. 188, L. 1867; re-en. Sec. 309, p. 95, Cod. Stat. 1871; re-en. Sec. 359, p. 139, L. 1877; re-en. Sec. 359, 1st Div. Rev. Stat. 1879; re-en. Sec. 371, 1st Div. Comp. Stat. 1887; amd. Sec. 1316, C. Civ. Proc. 1895; re-en. Sec. 6877, Rev. C. 1907; re-en. Sec. 9495, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 744; re-en. Sec. 9495, R.C.M. 1935; R.C.M. 1947, 93-6219.

Cross-References

Definition of foreclosure, 71-1-221.

Possession of lands prior to foreclosure upon default and during period of redemption, 71-1-229.

71-1-203. Writing required. A mortgage of real property can be created, renewed, or extended only by writing, with the formalities required in the case of a grant of real property.

History: En. Sec. 3842, Civ. C. 1895; re-en. Sec. 5749, Rev. C. 1907; re-en. Sec. 8264, R.C.M. 1921; Cal. Civ. C. Sec. 2922; Field Civ. C. Sec. 1623; re-en. Sec. re-en. Sec. 8264, R.C.M. 1935; R.C.M. 1947, 52-203.

Cross-References

What contracts must be in writing, 28-2-903.

Transfer of property grants and their interpretation, Title 70, ch. 1, part 5.

Transfer of real property to be in writing — statute of frauds, 70-20-101.

Recording transfers of real property, Title 70, ch. 21.

Recording of mortgages and assignments, 71-1-207.

Period of mortgage — renewal, 71-1-210.

71-1-204. Form of mortgage. A mortgage of real property may be made in substantially the following form:

"This mortgage, made the .... day of ...., in the year ...., by A.B., of ...., mortgagor, to C.D., of ...., mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of .... dollars, on (or before) the .... day of ...., in the year ...., with interest thereon (or as security for the payment of an obligation, describing it, etc.).

....
A.B."

History: En. Sec. 3841, Civ. C. 1895; re-en. Sec. 5748, Rev. C. 1907; re-en. Sec. 8263, R.C.M. 1921; Cal. Civ. C. Sec. 2948; re-en. Sec. 8263, R.C.M. 1935; R.C.M. 1947, 52-202.

71-1-205. Priorities. Any lien entitled to actual priority over the lien of mortgage by force of any express provision of the laws of this state shall continue to have priority to the extent prescribed by law.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part).

Cross-References

Tax on personal property lien on realty, 15-16-402.

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

71-1-206. Future advances. (1) The amount of future advances or total indebtedness that may be outstanding at any given time and subject to mortgage protection must be stated in the mortgage. The mortgagee may reserve the right, at the mortgagee's option, to refuse to make all or any part of a future advance. The total amount of indebtedness that may be secured by the mortgage may decrease or increase from time to time, but the total principal amount of the obligations secured at any one time may not exceed the face amount stated in the mortgage together with interest as provided in the instrument secured by the mortgage.

(2) The lien for the stated amount of future advances or total indebtedness shall, notwithstanding the fact that from time to time during the term of the

mortgage no indebtedness is due from the mortgagor to the mortgagee, have priority to the same extent as if the amount thereof had been actually advanced by the mortgagee to the mortgagor at the time of the execution of the mortgage. The lien extends to interest as provided in the instrument secured by the mortgage.

(3) The mortgagee shall, upon demand of the mortgagor or a creditor, furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances. Upon receipt of such statement or at any other time following the execution and delivery of the mortgage, the mortgagor may deliver written notice, duly acknowledged, to the mortgagee plainly stating that the mortgagor does not desire to request or apply for any future advances if none have been allowed or for any further advances if additional advances have in fact been theretofore allowed under the mortgage, clearly identifying the mortgage by reference to its date, the parties thereto, and the principal amount of the original indebtedness and the limit placed on contemplated future advances, if allowed. Upon the recording of such written notice by the mortgagor in the county and counties where the mortgage is recorded, the lien of the mortgage shall continue to have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due, and other charges as evidenced by the original loan-contract and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. The mortgagor retains the right to demand satisfaction of the mortgage at any time the balance is zero.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part); amd. Sec. 1, Ch. 351, L. 1985.

Cross-References

Future advances under U.C.C. — after-acquired property, 30-9-204.

71-1-207. Recording of mortgages and assignments. (1) Mortgages of real property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants thereof.

(2) An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons, including subsequent purchasers, encumbrancers, mortgagees, or other lienholders. Any such assignment shall contain the assignee's post-office address at his place of residence and shall not be entitled to be recorded or filed unless it contains such post-office address.

History: (1)En. Sec. 3844, Civ. C. 1895; re-en. Sec. 5751, Rev. C. 1907; re-en. Sec. 8266, R.C.M. 1921; Cal. Civ. C. Sec. 2952; re-en. Sec. 8266, R.C.M. 1935; Sec. 52-205, R.C.M. 1947; (2)En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R.C.M. 1921; Cal. Civ. C. Sec. 2934; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; re-en. Sec. 8259, R.C.M. 1935; amd. Sec. 11-131, Ch. 264, L. 1963; Sec. 52-114, R.C.M. 1947; R.C.M. 1947, 52-114, 52-205.

Cross-References

Indexes to recorded documents, 7-4-2619.

Assignment of security interest, 30-9-405.

Recording transfers of real property, Title 70, ch. 21, part 2.

Recording of mortgages, 70-21-202.

Writing required, 71-1-203.

71-1-208. Recording of subordination or waiver agreements. A subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers, or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved.

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963; R.C.M. 1947, 52-116.

71-1-209. Recording defeasance necessary to affect grant. When a grant of real property purports to be an absolute conveyance but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees or persons having actual notice unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county clerk of the county where the property is situated.

History: En. Sec. 3843, Civ. C. 1895; re-en. Sec. 5750, Rev. C. 1907; re-en. Sec. 8265, R.C.M. 1921; Cal. Civ. C. Sec. 2950; re-en. Sec. 8265, R.C.M. 1935; R.C.M. 1947, 52-204.

71-1-210. Period of mortgage — renewal. Every mortgage of real property made, acknowledged, and recorded as provided by the laws of this state shall be good as against all from the time it is so recorded until 8 years after the maturity of the entire debt or obligation secured thereby and no longer, unless the mortgagee, his heirs, executors, administrators, representatives, or assigns shall, within 60 days after the expiration of said 8 years, file in the office of the county clerk where said mortgage is recorded an affidavit setting forth the date of said mortgage, when and where recorded, the amount of the debt secured thereby, and the amount remaining unpaid and that the mortgage is not renewed for the purpose of hindering, delaying, or defrauding creditors of the mortgagor or owner of the land, and upon the filing of said affidavit, the mortgage shall be valid against all persons for a further period of 8 years.

History: En. Sec. 1, Ch. 27, L. 1913; re-en. Sec. 8267, R.C.M. 1921; amd. Sec. 1, Ch. 104, L. 1933; re-en. Sec. 8267, R.C.M. 1935; R.C.M. 1947, 52-206.

Cross-References

Small tract financing — time for foreclosure same as mortgage, 71-1-311.

71-1-211. Satisfaction of mortgage — record thereof. (1) A mortgage shall be discharged upon the record thereof by the county clerk in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified as in this code prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

(2) Every such certificate and the proof and acknowledgment thereof shall be recorded at full length, and a reference shall be made to the book and page containing such record in the mortgagor and mortgagee indexes as to the discharge of such mortgage.

History: En. Secs. 37, 38, p. 485, Bannack Stat.; re-en. Secs. 37, 38, p. 402, Cod. Stat. 1871; re-en. Secs. 214, 215, 5th Div. Rev. Stat. 1879; re-en. Secs. 272, 273, 5th Div. Comp. Stat. 1887; re-en. Secs. 3846, 3847, Civ. C. 1895; re-en. Secs. 5753, 5754, Rev. C. 1907; re-en. Secs. 8269, 8270, R.C.M. 1921; Cal. Civ. C. Secs. 2939, 2940; re-en. Secs. 8269, 8270, R.C.M. 1935; R.C.M. 1947, 52-208, 52-209; amd. Sec. 1, Ch. 127, L. 1981.

71-1-212. Penalties for failure to give certificate of discharge or release after full performance. Any mortgagee or his personal representative or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall for the space of 30 days after being requested refuse or neglect to execute, acknowledge, and deliver to the mortgagor a certificate of discharge or release thereof shall be liable to the mortgagor, his heirs, or assigns in the sum of $100 and also for all actual damages occasioned by such neglect or refusal.

History: En. Sec. 39, p. 486, Bannack Stat.; re-en. Sec. 39, p. 402, Cod. Stat. 1871; re-en. Sec. 216, 5th Div. Rev. Stat. 1879; re-en. Sec. 274, 5th Div. Comp. Stat. 1887; re-en. Sec. 3748, Civ. C. 1895; re-en. Sec. 5755, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1921; re-en. Sec. 8271, R.C.M. 1921; Cal. Civ. C. Sec. 2941; re-en. Sec. 8271, R.C.M. 1935; R.C.M. 1947, 52-210(part).

71-1-213. Discharge or release by other than mortgagee. (1) If the discharge or release is made by the personal representative of the mortgagee, it must be accompanied by a certified copy of his authority unless such authority is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(2) If the discharge or release is made by an assignee, it must be accompanied by the assignment of the mortgage unless the assignment is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(3) If the discharge or release is executed by an attorney in fact, the discharge or release must have attached to it the power of attorney under which it is made unless the power of attorney is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(4) If the discharge or release is executed by the heir or heirs of the mortgagee, the discharge or release must be accompanied by a certified copy of an order or decree of a court of competent jurisdiction showing such authority unless the order or decree is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(5) Foreign administrators and executors may discharge or release mortgages of record in Montana if the discharge or release of mortgages is accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be recorded with the discharge or release of the mortgage. When presented and recorded, the discharge or release has the same effect as if the mortgage was discharged or released by the mortgagee.

History: En. Sec. 39, p. 486, Bannack Stat.; re-en. Sec. 39, p. 402, Cod. Stat. 1871; re-en. Sec. 216, 5th Div. Rev. Stat. 1879; re-en. Sec. 274, 5th Div. Comp. Stat. 1887; re-en. Sec. 3748, Civ. C. 1895; re-en. Sec. 5755, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1921; re-en. Sec. 8271, R.C.M. 1921; Cal. Civ. C. Sec. 2941; re-en. Sec. 8271, R.C.M. 1935; R.C.M. 1947, 52-210(part); amd. Sec. 1, Ch. 11, L. 1979.

Cross-References

Power of attorney to execute, 71-1-102.

71-1-214 through 71-1-220 reserved.

71-1-221. Definition of foreclosure. The term "foreclosure" for the purpose of this part shall include sale or possession of real property made or taken whether by judicial proceedings or otherwise.

History: En. Sec. 2, Ch. 2, L. 1935; re-en. Sec. 9473.2, R.C.M. 1935; R.C.M. 1947, 93-6009.

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

Mortgage not considered conveyance — recovery of possession, 71-1-202.

Possession of lands prior to foreclosure upon default and during period of redemption, 71-1-229.

71-1-222. Proceedings in foreclosure suits. (1) There is only one action for the recovery of debt or the enforcement of any right secured by mortgage upon real estate, and that action must be in accordance with the provisions of this part. In the action, the court may, by its judgment, direct:

(a) a sale of the encumbered property (or as much of the property as may be necessary);

(b) the application of the proceeds of the sale, including the payment of property taxes due at the time of foreclosure; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for the balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of the judgment debtor, as in other cases on which execution may be issued.

(3) A person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien on the property, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, does not need to be made a party to the action. The judgment and the proceedings are as conclusive against the party holding the unrecorded conveyance or lien as if the holding party had been made a party to the action.

History: En. Sec. 223, p. 90, Bannack Stat.; en. Sec. 246, p. 185, L. 1867; re-en. Sec. 295, p. 92, Cod. Stat. 1871; re-en. Sec. 346, p. 135, L. 1877; re-en. Sec. 346, 1st Div. Rev. Stat. 1879; re-en. Sec. 358, 1st Div. Comp. Stat. 1887; amd. Sec. 1290, C. Civ. Proc. 1895; re-en. Sec. 6861, Rev. C. 1907; re-en. Sec. 9467, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 726; re-en. Sec. 9467, R.C.M. 1935; amd. Sec. 11-166, Ch. 264, L. 1963; R.C.M. 1947, 93-6001; amd. Sec. 3, Ch. 80, L. 1993.

Cross-References

Mortgage not personal obligation, 71-1-104.

Deficiency judgment not allowed on foreclosure of purchase price mortgage, 71-1-232.

Attorney fee on foreclosure, 71-1-233.

71-1-223. Power of sale. When a real estate mortgage confers a power of sale, either upon the mortgagee or any other person, to be executed after a breach of the obligation for which the mortgage is a security, either an action may be maintained under this part to foreclose or proceedings may be had under the provisions of the mortgage.

History: **En. Sec. 1293, C. Civ. Proc. 1895; re-en. Sec. 6864, Rev. C. 1907; re-en. Sec. 9470, R.C.M. 1921; re-en. Sec. 9470, R.C.M. 1935; amd. Sec. 11-167, Ch. 264, L. 1963; R.C.M. 1947, 93-6004.**

Cross-References

Power of sale conferred by mortgage, 71-1-111.

71-1-224. Sale — notice. Real estate sold under a power of sale given and contained in a mortgage of real estate, except in a trust indenture as defined in the "Small Tract Financing Act of Montana", shall be advertised for sale at least 30 days before the date fixed for such sale, in a newspaper in the county in which such real estate is situated, and in case there is no newspaper printed and published in said county, then by posting notices in at least five conspicuous places in said county, one of which notices must be posted on the land so advertised for sale. Two other notices must be posted in conspicuous places in the township in which said land is situated, one in such conspicuous place in said county as will be most likely to give notice to all persons interested in said sale, and one of said notices must be posted in a conspicuous place at the front door of the county courthouse of the county in which said land is located, and in addition to the publication or posting, as hereinbefore provided, notices of such sale must be served personally at least 30 days before the date fixed for such sale upon the occupant of the property so advertised for sale and upon the mortgagor if within the state of Montana and upon every person or persons having or claiming an interest of record in the real estate so advertised for sale who may be found within the state of Montana.

History: **En. Sec. 1, Ch. 165, L. 1917; re-en. Sec. 9471, R.C.M. 1921; re-en. Sec. 9471, R.C.M. 1935; amd. Sec. 18, Ch. 177, L. 1963; R.C.M. 1947, 93-6005.**

Cross-References

Right of redemption, 71-1-228.

Petition for attorney fee — notice, 71-1-234.

Small Tract Financing Act of Montana, Title 71, ch. 1, part 3.

71-1-225. Surplus money from sale. If there be surplus money remaining after the payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it and in the meantime may direct it to be deposited in court.

History: **En. Sec. 247, p. 186, L. 1867; re-en. Sec. 296, p. 92, Cod. Stat. 1871; re-en. Sec. 347, p. 136, L. 1877; re-en. Sec. 347, 1st Div. Rev. Stat. 1879; re-en. Sec. 359, 1st Div. Comp. Stat. 1887; re-en. Sec. 1291, C. Civ. Proc. 1895; re-en. Sec. 6862, Rev. C. 1907; re-en. Sec. 9468, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 727; re-en. Sec. 9468, R.C.M. 1935; R.C.M. 1947, 93-6002.**

71-1-226. Proceedings when debt secured falls due at different times. If the debt for which the mortgage, lien, or encumbrance is held is not all due, as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterward, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

History: **En. Sec. 248, p. 186, L. 1867; re-en. Sec. 297, p. 92, Cod. Stat. 1871; re-en. Sec. 348, p. 136, L. 1877; re-en. Sec. 348, 1st Div. Rev. Stat. 1879; re-en. Sec. 360, 1st Div. Comp. Stat. 1887; re-en. Sec. 1292, C. Civ. Proc. 1895; re-en. Sec. 6863, Rev. C. 1907;**

re-en. Sec. 9469, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 728; re-en. Sec. 9469, R.C.M. 1935; R.C.M. 1947, 93-6003.

Cross-References
Waste prohibited, 71-1-106.

71-1-227. Injunction to prevent injury to property. The court may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon.

History: En. Sec. 240, p. 93, Bannack Stat.; re-en. Sec. 261, p. 188, L. 1867; re-en. Sec. 310, p. 95, Cod. Stat. 1871; re-en. Sec. 360, p. 139, L. 1877; re-en. Sec. 360, 1st Div. Rev. Stat. 1879; re-en. Sec. 372, 1st Div. Comp. Stat. 1887; re-en. Sec. 1318, C. Civ. Proc. 1895; re-en. Sec. 6878, Rev. C. 1907; re-en. Sec. 9496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 745; re-en. Sec. 9496, R.C.M. 1935; R.C.M. 1947, 93-6220(part).

Cross-References
Waste prohibited, 71-1-106.

71-1-228. Rights of redemption applicable. All of the rights, powers, and privileges concerning the redemption from sales of real estate applicable to the sales of real estate under foreclosure proceedings or sales under execution shall be granted and allowed to sales of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except to sales of real estate under and by virtue of the power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana".

History: En. Sec. 2, Ch. 165, L. 1917; re-en. Sec. 9472, R.C.M. 1921; re-en. Sec. 9472, R.C.M. 1935; amd. Sec. 19, Ch. 177, L. 1963; R.C.M. 1947, 93-6006.

Cross-References
Redemption of real property, Title 25, ch. 13, part 8.

71-1-229. Possession of lands prior to foreclosure upon default and during period of redemption. The purchaser of lands at mortgage foreclosure is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while the execution debtor personally occupies the land as a home for himself and his family. It is unlawful to insert in any mortgage of real estate any provision intended to constitute a waiver by the owner of real estate personally occupying land as a home for himself and family of the provision of this section or any provision intended to give the mortgagee possession of the land or premises prior to foreclosure upon default of tax, principal, or interest payments. The intention hereof is to insure to such owner the possession of his land prior to foreclosure and during the year of redemption.

History: En. Sec. 1, Ch. 230, L. 1921; re-en. Sec. 9449, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1933; re-en. Sec. 9449, R.C.M. 1935; R.C.M. 1947, 93-5841(part); amd. Sec. 2, Ch. 11, L. 1979.

Cross-References
Mortgage not considered conveyance — recovery of possession, 71-1-202.
Definition of foreclosure, 71-1-221.

71-1-230. Action to redeem mortgage. An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor or those claiming under him against the mortgagee in possession or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises for 10 years after breach of some condition of the mortgage.

History: **En. Sec. 521, C. Civ. Proc. 1895; re-en. Sec. 6454, Rev. C. 1907; re-en. Sec. 9044, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 346; re-en. Sec. 9044, R.C.M. 1935; R.C.M. 1947, 93-2616.**

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

Mortgagee not entitled to possession, 71-1-105.

71-1-231. Redemption by multiple mortgagors. If there is more than one such mortgagor or more than one person claiming under a mortgagor, some of whom are not entitled to maintain such an action under the provisions of 71-1-230 or Title 27, chapter 2, any one of them who is entitled to maintain such an action may redeem therein a divided or undivided part of the mortgaged premises, according as his interest may appear, and have an accounting for a part of the rents and profits proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money bearing the same proportion to the whole of such money as the value of his divided or undivided interest in the premises bears to the whole of such premises.

History: **En. Sec. 522, C. Civ. Proc. 1895; re-en. Sec. 6455, Rev. C. 1907; re-en. Sec. 9045, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 347; re-en. Sec. 9045, R.C.M. 1935; R.C.M. 1947, 93-2617.**

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

Proceedings when debt secured falls due at different times, 71-1-226.

71-1-232. Deficiency judgment not allowed on foreclosure of purchase price mortgage. Upon the foreclosure of any mortgage, executed to any vendor of real property or to his heirs, executors, administrators, or assigns for the balance of the purchase price of such real property, the mortgagee shall not be entitled to a deficiency judgment on account of such mortgage or note or obligation secured by the same.

History: **En. Sec. 1, Ch. 2, L. 1935; re-en. Sec. 9473.1, R.C.M. 1935; R.C.M. 1947, 93-6008.**

Cross-References

Proceedings in foreclosure suits, 71-1-222.

Deficiency judgment not allowed under Small Tract Financing Act of Montana, 71-1-317.

Priority of purchase money mortgage, 71-3-114.

71-1-233. Attorney's fee on foreclosure. In an action to foreclose a mortgage of real property, the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, any stipulation in the instrument or any agreement between the parties to the contrary notwithstanding.

History: **En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R.C.M. 1921; re-en. Sec. 9798, R.C.M. 1935; amd. Sec. 11-169, Ch. 264, L. 1963; R.C.M. 1947, 93-8613(part).**

Cross-References

Inclusion of attorney fees in bill of costs, 25-10-302.

Proceedings in foreclosure suits, 71-1-222.

71-1-234. Attorney's fee — petition and notice. If the mortgagee shall demand attorneys' fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana", he shall petition the district court of the county in which said real estate or any part thereof may be situated to fix the amount of such attorney's fee, and a copy of such petition shall be served upon all parties having or claiming an interest of record in the property to be sold or such of them as may be found within the state, which copy of said petition must be served at least 10 days before the day fixed for hearing, and notice of the time and place of such hearing shall be served at the same time as the copy of said petition is served. Such petition shall be acted upon by the district court before the notice of sale by publication or posting, as hereinbefore provided for, shall be given.

History: En. Sec. 3, Ch. 165, L. 1917; re-en. Sec. 9473, R.C.M. 1921; re-en. Sec. 9473, R.C.M. 1935; amd. Sec. 20, Ch. 177, L. 1963; R.C.M. 1947, 93-6007.

71-1-235. Instruments — negotiability and remedies. Nothing in this part shall be deemed to affect the negotiability of an instrument, and nothing in this part shall be deemed to limit remedies otherwise available to the purchaser of a promissory note secured by a mortgage unless such purchaser at the time of purchase had notice that the note was so secured.

History: En. 93-6010 by Sec. 11-168, Ch. 264, L. 1963; R.C.M. 1947, 93-6010.

Cross-References

When promise or order unconditional, 30-3-105.

Part 3
Small Tract Financing

71-1-301. Short title. This part may be cited as the "Small Tract Financing Act of Montana".

History: En. Sec. 1, Ch. 177, L. 1963; R.C.M. 1947, 52-401.

71-1-302. Policy. Because the financing of homes and business expansion is essential to the development of the state of Montana and because financing of homes and business expansion, usually involving areas of real estate of not more than 30 acres, has been restricted by the laws relating to mortgages of real property and because more financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than 30 acres as provided in this part.

History: En. Sec. 2, Ch. 177, L. 1963; amd. Sec. 1, Ch. 337, L. 1974; R.C.M. 1947, 52-402; amd. Sec. 1, Ch. 114, L. 1989.

71-1-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Thirty acres" means 30 acres of land.

(4) "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(5) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or his successor in interest.

History: En. Sec. 3, Ch. 177, L. 1963; amd. Sec. 2, Ch. 337, L. 1974; R.C.M. 1947, 52-403(part); amd. Sec. 2, Ch. 114, L. 1989.

71-1-304. Trust indentures authorized — power of sale for breach in trustee. (1) Transfers in trust of any interest in real property of an area not exceeding 30 acres may be made to secure the performance of an obligation of a grantor or any other person named in the indenture to a beneficiary provided that it is unlawful to substitute a trust indenture for any mortgage in existence on March 5, 1963.

(2) Where any transfer in trust of any interest in real property is made to secure the performance of the obligation referred to in subsection (1), a power of sale is conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

(3) A trust indenture executed in conformity with this part may be foreclosed by advertisement and sale in the manner provided in this part or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision in the trust indenture.

(4) Where the trust indenture states that the real property involved does not exceed 30 acres, the statement is binding upon all parties and conclusive as to compliance with the provisions of this part relative to the power to make a transfer, trust, and power of sale.

History: (1) thru (3)En. Sec. 4, Ch. 177, L. 1963; amd. Sec. 3, Ch. 337, L. 1974; Sec. 52-404, R.C.M. 1947; (4)En. Sec. 3, Ch. 177, L. 1963; amd. Sec. 2, Ch. 337, L. 1974; Sec. 52-403, R.C.M. 1947; R.C.M. 1947, 52-403(part), 52-404; amd. Sec. 3, Ch. 114, L. 1989.

71-1-305. Trust indenture considered to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this part, in which event the provisions of this part shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963; R.C.M. 1947, 52-417.

71-1-306. Qualifications of trustee — successor trustee. (1) The trustee of a trust indenture under this part shall be:

(a) an attorney who is licensed to practice law in Montana;

(b) a bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) a title insurer or title insurance agent or agency authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record, in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the

original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: **En. Sec. 5, Ch. 177, L. 1963; R.C.M. 1947, 52-405; amd. Sec. 1, Ch. 33, L. 1987.**

Cross-References

Trust Code, Title 72, ch. 33 through 36.

71-1-307. Reconveyance upon performance — liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee, upon written request of the beneficiary, shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: **En. Sec. 6, Ch. 177, L. 1963; R.C.M. 1947, 52-406.**

Cross-References

Penalties for failure to give certificate of discharge or release after full performance, 71-1-212.

71-1-308 through 71-1-310 reserved.

71-1-311. Time for foreclosure same as mortgage. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: **En. Sec. 7, Ch. 177, L. 1963; R.C.M. 1947, 52-407.**

Cross-References

Period of mortgage — renewal, 71-1-210.

71-1-312. Discontinuance of foreclosure proceedings when entire amount of default paid. (1) Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred and thereby cure the default theretofore existing.

(2) Thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred.

(3) If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary or his assignee shall, on demand of any person having an interest in the trust property, execute, acknowledge, and deliver to him a request that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of sale under such trust indenture.

(4) Any beneficiary under a trust indenture or his assignee who, for a period of 30 days after such demand, refuses to request the trustee to execute, acknowledge, and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal.

(5) A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded, and a statement that such notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963; R.C.M. 1947, 52-412.

71-1-313. Conditions for foreclosure by advertisement and sale. The trustee may foreclose a trust indenture by advertisement and sale under this part if:

(1) the trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture or some part thereof is situated;

(2) there is a default by the grantor or other person owing an obligation or by their successors in interest, the performance of which is secured by the trust indenture, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(3) the trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture or some part thereof is situated a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(a) the names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(b) a description of the property covered by the trust indenture;

(c) the book and page of the mortgage records where the trust indenture is recorded;

(d) the default for which the foreclosure is made;

(e) the sum owing on the obligation secured by the trust indenture;

(f) the trustee's or beneficiary's election to sell the property to satisfy the obligation;

(g) the date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9 a.m. and 4 p.m., mountain standard time;

(h) the place of sale which shall be at the courthouse of the county or one of the counties where the property is situated or at the location of the property or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

History: En. Sec. 8, Ch. 177, L. 1963; R.C.M. 1947, 52-408(1).

71-1-314. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in 71-1-315(1) may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross-reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963; R.C.M. 1947, 52-415.

71-1-315. Notice — sale — payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be recorded in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given. In the event a sale cannot be held at the scheduled time by reason of the automatic stay provision of the United States Bankruptcy Code, 11 U.S.C. 362, or of a stay order issued by any court of competent jurisdiction, the person making the sale may, as often as he considers expedient, postpone the sale. Each postponement may not exceed 30 days, and all postponements, in the aggregate, may not exceed 120 days. Each postponement must be effected by a public proclamation at the time and place fixed in the notice of sale or fixed by previous postponement. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: Ap. p. Sec. 8, Ch. 177, L. 1963; Sec. 52-408, R.C.M. 1947; (1) thru (4)En. Sec. 9, Ch. 177, L. 1963; amd. Sec. 1, Ch. 53, L. 1977; Sec. 52-409, R.C.M. 1947; R.C.M. 1947, 52-408(2), 52-409; amd. Sec. 1, Ch. 55, L. 1983; amd. Sec. 1, Ch. 212, L. 1991.

71-1-316. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows:

(1) to the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) to the obligation secured by the trust indenture;

(3) the surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963; R.C.M. 1947, 52-413.

71-1-317. Deficiency judgment not allowed. When a trust indenture executed in conformity with this part is foreclosed by advertisement and sale, no other or further action, suit, or proceedings shall be taken or judgment entered for any deficiency against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on such note, bond, or other obligation.

History: **En. Sec. 14, Ch. 177, L. 1963; R.C.M. 1947, 52-414.**

Cross-References

Deficiency judgment not allowed on foreclosure of purchase price mortgage, 71-1-232.

71-1-318. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this part relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under 71-1-315(2) shall be prima facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the grantor and his successors in interest and of all persons claiming by, through, or under them in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: **En. Sec. 10, Ch. 177, L. 1963; R.C.M. 1947, 52-410.**

71-1-319. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: **En. Sec. 11, Ch. 177, L. 1963; R.C.M. 1947, 52-411.**

71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed the lesser of $1,000 or 1% of the amount due on the obligation, both principal and interest, at the time of default. In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: **En. Sec. 16, Ch. 177, L. 1963; R.C.M. 1947, 52-416; amd. Sec. 2, Ch. 55, L. 1983.**

71-1-321. Deeds of trust and trust deeds not invalidated. The Small Tract Financing Act of Montana does not invalidate or preclude the use in this state of instruments, sometimes denominated deeds of trust, trust deeds, or trust indentures, which are not executed in conformity with this part, but in which a conveyance for security purposes is made to a trustee or trustees for the benefit of one or more lenders. Such instruments are considered to be mortgages and are subject to all laws relating to mortgages on real property. Every such instrument, recorded as prescribed by law, from the time it is filed for record is constructive notice of its contents to subsequent purchasers and encumbrancers.

History: En. Sec. 1, Ch. 362, L. 1979.

CHAPTER 2

PLEDGES

Part 1 — Pledges in General

71-2-101. Definitions.
71-2-102. When contract considered a pledge.
71-2-103. Delivery required.
71-2-104. Pledgee or pledge holder for reward.
71-2-105. Gratuitous pledge holder.
71-2-106. Obligations of pledge holder.
71-2-107. Property pledged to extent of lien.
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71-2-109. When real owner cannot defeat pledge.
71-2-110. Debtor's misrepresentation of value of pledge.

Chapter Cross-References

"Entrusting" under U.C.C., 30-2-403.

Part 1

Pledges in General

71-2-101. Definitions. (1) "Pledge" is a deposit of personal property by way of security for the performance of another's act.

(2) A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a "pledge holder".

History: (1)En. Sec. 3890, Civ. C. 1895; re-en. Sec. 5774, Rev. C. 1907; re-en. Sec. 8292, R.C.M. 1921; Cal. Civ. C. Sec. 2986; Field Civ. C. Sec. 1647; re-en. Sec. 8292, R.C.M. 1935; Sec. 65-101, R.C.M. 1947; (2)En. Sec. 3897, Civ. C. 1895; re-en. Sec. 5781, Rev. C. 1907; re-en. Sec. 8299, R.C.M. 1921; Cal. Civ. C. Sec. 2993; Field Civ. C. Sec. 1654; re-en. Sec. 8299, R.C.M. 1935; Sec. 65-108, R.C.M. 1947; R.C.M. 1947, 65-101, 65-108.

71-2-102. When contract considered a pledge. Every contract by which the possession of personal property is transferred as security only is to be deemed a pledge.

History: En. Sec. 3891, Civ. C. 1895; re-en. Sec. 5775, Rev. C. 1907; re-en. Sec. 8293, R.C.M. 1921; Cal. Civ. C. Sec. 2987; Field Civ. C. Sec. 1648; re-en. Sec. 8293, R.C.M. 1935; R.C.M. 1947, 65-102.

71-2-103. Delivery required. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee or to a pledge holder, as hereafter prescribed.

History: En. Sec. 3892, Civ. C. 1895; re-en. Sec. 5776, Rev. C. 1907; re-en. Sec. 8294, R.C.M. 1921; Cal. Civ. C. Sec. 2988; Field Civ. C. Sec. 1649; re-en. Sec. 8294, R.C.M. 1935; R.C.M. 1947, 65-103.

71-2-104. Pledgee or pledge holder for reward. A pledgee or a pledge holder for reward assumes the duties and liabilities of a depositary for reward.

History: En. Sec. 3901, Civ. C. 1895; re-en. Sec. 5785, Rev. C. 1907; re-en. Sec. 8303, R.C.M. 1921; Cal. Civ. C. Sec. 2997; Field Civ. C. Sec. 1658; re-en. Sec. 8303, R.C.M. 1935; R.C.M. 1947, 65-112.

Cross-References

Custody of thing other than money, 28-1-1224.

71-2-105. Gratuitous pledge holder. A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

History: En. Sec. 3902, Civ. C. 1895; re-en. Sec. 5786, Rev. C. 1907; re-en. Sec. 8304, R.C.M. 1921; Cal. Civ. C. Sec. 2998; Field Civ. C. Sec. 1659; re-en. Sec. 8304, R.C.M. 1935; R.C.M. 1947, 65-113.

71-2-106. Obligations of pledge holder. (1) A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder and, in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

(2) A pledge holder must enforce all the rights of the pledgee unless authorized by him to waive them.

History: (1)En. Sec. 3899, Civ. C. 1895; re-en. Sec. 5783, Rev. C. 1907; re-en. Sec. 8301, R.C.M. 1921; Cal. Civ. C. Sec. 2995; Field Civ. C. Sec. 1656; re-en. Sec. 8301, R.C.M. 1935; Sec. 65-110, R.C.M. 1947; (2)En. Sec. 3900, Civ. C. 1895; re-en. Sec. 5784, Rev. C. 1907; re-en. Sec. 8302, R.C.M. 1921; Cal. Civ. C. Sec. 2996; Field Civ. C. Sec. 1657; re-en. Sec. 8302, R.C.M. 1935; Sec. 65-111, R.C.M. 1947; R.C.M. 1947, 65-110, 65-111.

71-2-107. Property pledged to extent of lien. One who has a lien upon property may pledge it to the extent of his lien.

History: En. Sec. 3894, Civ. C. 1895; re-en. Sec. 5778, Rev. C. 1907; re-en. Sec. 8296, R.C.M. 1921; Cal. Civ. C. Sec. 2990; Field Civ. C. Sec. 1651; re-en. Sec. 8296, R.C.M. 1935; R.C.M. 1947, 65-105.

71-2-108. When pledge may not be withdrawn. One who pledges property as security for the obligation of another cannot withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

History: En. Sec. 3898, Civ. C. 1895; re-en. Sec. 5782, Rev. C. 1907; re-en. Sec. 8300, R.C.M. 1921; Cal. Civ. C. Sec. 2994; Field Civ. C. Sec. 1655; re-en. Sec. 8300, R.C.M. 1935; R.C.M. 1947, 65-109.

71-2-109. When real owner cannot defeat pledge. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it cannot set up his own title to defeat a pledge of the property made by the other to a pledgee who received the property in good faith in the ordinary course of business and for value.

History: En. Sec. 3895, Civ. C. 1895; re-en. Sec. 5779, Rev. C. 1907; re-en. Sec. 8297, R.C.M. 1921; Cal. Civ. C. Sec. 2991; Field Civ. C. Sec. 1652; re-en. Sec. 8297, R.C.M. 1935; R.C.M. 1947, 65-106.

71-2-110. Debtor's misrepresentation of value of pledge. Where a debtor has obtained credit or an extension of time by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented and in default thereof may recover his debt immediately, though it be not actually due.

History: En. Sec. 3903, Civ. C. 1895; re-en. Sec. 5787, Rev. C. 1907; re-en. Sec. 8305, R.C.M. 1921; Cal. Civ. C. Sec. 2999; Field Civ. C. Sec. 1660; re-en. Sec. 8305, R.C.M. 1935; R.C.M. 1947, 65-114.

CHAPTER 3

LIENS

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Part 1
General Provisions

71-3-101. Definitions. (1) A "general lien" is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations or all of a particular class of obligations which exist in his favor against the owner of the property.

(2) A "lien" is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act. Liens are either general or special.

(3) A "special lien" is one which the holder thereof can enforce only as security for the performance of a particular act or obligation and of such obligations as may be incidental thereto.

History: (1)Ap. p. Sec. 3730, Civ. C. 1895; re-en. Sec. 5704, Rev. C. 1907; re-en. Sec. 8219, R.C.M. 1921; Cal. Civ. C. Sec. 2872; Based on Field Civ. C. Sec. 1582; re-en. Sec. 8219, R.C.M. 1935; Sec. 45-101, R.C.M. 1947; Ap. p. Sec. 3731, Civ. C. 1895; re-en. Sec. 5705, Rev. C. 1907; re-en. Sec. 8220, R.C.M. 1921; Cal. Civ. C. Sec. 2873; Field Civ. C. Sec. 1583; re-en. Sec. 8220, R.C.M. 1935; Sec. 45-102, R.C.M. 1947; (2)En. Sec. 3732, Civ. C. 1895; re-en. Sec. 5706, Rev. C. 1907; re-en. Sec. 8221, R.C.M. 1921; Cal. Civ. C. Sec. 2874; Field Civ. C. Sec. 1584; re-en. Sec. 8221, R.C.M. 1935; Sec. 45-103, R.C.M. 1947; (3)En. Sec. 3733, Civ. C. 1895; re-en. Sec. 5707, Rev. C. 1907; re-en. Sec. 8222, R.C.M. 1921; Cal. Civ. C. Sec. 2875; Field Civ. C. Sec. 1585; re-en. Sec. 8222, R.C.M. 1935; Sec. 45-104, R.C.M. 1947; R.C.M. 1947, 45-101, 45-102, 45-103, 45-104.

Cross-References

Lien, when used in reference to security interest in personal property, to include security interest under ch. 9 of U.C.C., 1-1-205.

Judgment lien — expiration, 25-9-301.

Judgment lien for compensation — attorneys, 37-61-420.

Common carrier — lien on baggage for payment of fare, 69-11-206.

Carrier's lien for freightage, 69-11-410.

Security interest in livestock, Title 81, ch. 8, part 3.

Financing programs of Board of Housing, 90-6-108.

71-3-102. How liens created. A lien is created:

(1) by contract of the parties; or

(2) by operation of law.

History: En. Sec. 3740, Civ. C. 1895; re-en. Sec. 5710, Rev. C. 1907; re-en. Sec. 8225, R.C.M. 1921; Cal. Civ. C. Sec. 2881; Field Civ. C. Sec. 1587; re-en. Sec. 8225, R.C.M. 1935; R.C.M. 1947, 45-107.

71-3-103. No lien for claim not due. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

History: En. Sec. 3741, Civ. C. 1895; re-en. Sec. 5711, Rev. C. 1907; re-en. Sec. 8226, R.C.M. 1921; Cal. Civ. C. Sec. 2882; Field Civ. C. Sec. 1588; re-en. Sec. 8226, R.C.M. 1935; R.C.M. 1947, 45-108.

71-3-104. Lien by agreement. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

History: En. Sec. 3743, Civ. C. 1895; re-en. Sec. 5713, Rev. C. 1907; re-en. Sec. 8228, R.C.M. 1921; Cal. Civ. C. Sec. 2884; Field Civ. C. Sec. 1590; re-en. Sec. 8228, R.C.M. 1935; R.C.M. 1947, 45-110.

71-3-105. Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

History: En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R.C.M. 1921; Cal. Civ. C. Sec. 2883; Field Civ. C. Sec. 1589; re-en. Sec. 8227, R.C.M. 1935; amd. Sec. 11-118, Ch. 264, L. 1963; R.C.M. 1947, 45-109.

Cross-References

When after-acquired collateral not security for antecedent debt, 30-9-108.

When security interest attaches — after-acquired property — future advances, 30-9-204.

Future advances subject to mortgage protection, 71-1-206.

71-3-106. Extent of lien. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

History: En. Sec. 3753, Civ. C. 1895; re-en. Sec. 5717, Rev. C. 1907; re-en. Sec. 8232, R.C.M. 1921; Cal. Civ. C. Sec. 2891; Field Civ. C. Sec. 1594; re-en. Sec. 8232, R.C.M. 1935; R.C.M. 1947, 45-114.

71-3-107. Prior liens. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him as a part of the claim for which his own lien exists.

History: En. Sec. 3734, Civ. C. 1895; re-en. Sec. 5708, Rev. C. 1907; re-en. Sec. 8223, R.C.M. 1921; Cal. Civ. C. Sec. 2876; re-en. Sec. 8223, R.c.M. 1935; R.C.M. 1947, 45-105.

71-3-108. Lien or contract for lien transfers no title. Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

History: En. Sec. 3750, Civ. C. 1895; re-en. Sec. 5714, Rev. C. 1907; re-en. Sec. 8229, R.C.M. 1921; Cal. Civ. C. Sec. 2888; Field Civ. C. Sec. 1591; re-en. Sec. 8229, R.C.M. 1935; R.C.M. 1947, 45-111.

71-3-109. Certain contracts void. Except as otherwise provided by the Uniform Commercial Code, all contracts for the forfeiture of property subject to a lien in satisfaction of the obligation secured thereby and all contracts in restraint of the right of redemption from a lien are void.

History: En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R.C.M. 1921; Cal. Civ. C. Sec. 2889; Based on Field Civ. C. Sec. 1592; re-en. Sec. 8230, R.C.M. 1935; amd. Sec. 11-119, Ch. 264, L. 1963; R.C.M. 1947, 45-112.

Cross-References

Debtor's right to redeem collateral, 30-9-506.

71-3-110. Enforcement of obligation by creditor. The existence of a lien, as security for the performance of an obligation, does not affect the right of the creditor to enforce the obligation without regard to the lien.

History: En. Sec. 3754, Civ. C. 1895; re-en. Sec. 5718, Rev. C. 1907; re-en. Sec. 8233, R.C.M. 1921; Field Civ. C. Sec. 1595; re-en. Sec. 8233, R.C.M. 1935; R.C.M. 1947, 45-115.

Cross-References

Proceedings in foreclosure suits — exclusive action, 71-1-222.

71-3-111. Creation of lien not a personal obligation. The creation of a lien does not itself imply that any person is bound to perform the act for which the lien is a security.

History: En. Sec. 3752, Civ. C. 1895; re-en. Sec. 5716, Rev. C. 1907; re-en. Sec. 8231, R.C.M. 1921; Cal. Civ. C. Sec. 2890; Field Civ. C. Sec. 1593; re-en. Sec. 8231, R.C.M. 1935; R.C.M. 1947, 45-113.

71-3-112. Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code, one who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower under 70-7-110 and 70-7-111.

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R.C.M. 1921; Cal. Civ. C. Sec. 2892; Field Civ. C. Sec. 1596; re-en. Sec. 8234, R.C.M. 1935; amd. Sec. 11-120, Ch. 264, L. 1963; R.C.M. 1947, 45-116.

Cross-References

Rights and duties when collateral in secured party's possession, 30-9-207.

71-3-113. Priority of liens. Other things being equal, different liens upon the same property have priority according to the time of their creation.

History: En. Sec. 3770, Civ. C. 1895; re-en. Sec. 5720, Rev. C. 1907; re-en. Sec. 8235, R.C.M. 1921; Cal. Civ. C. Sec. 2897; Based on Field Civ. C. Sec. 1597; re-en. Sec. 8235, R.C.M. 1935; R.C.M. 1947, 45-201.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-114. Priority of purchase money mortgage. Except as otherwise provided by law, a mortgage given for the price of real property at the time of its conveyance has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

History: En. Sec. 3771, Civ. C. 1895; re-en. Sec. 5721, Rev. C. 1907; re-en. Sec. 8236, R.C.M. 1921; Cal. Civ. C. Sec. 2898; re-en. Sec. 8236, R.C.M. 1935; R.C.M. 1947, 45-202.

Cross-References

Deficiency judgment not allowed on foreclosure of purchase price mortgage, 71-1-232.

71-3-115. Order of resort to different funds. Where one has a lien upon several things and other persons have subordinate liens upon or interests in some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

(1) to the things upon which he has an exclusive lien;

(2) to the things which are subject to the fewest subordinate liens;

(3) in like manner inversely to the number of subordinate liens upon the same thing; and

(4) when several things are within one of the foregoing classes and subject to the same number of liens, resort must be had:

(a) first, to the things which have not been transferred since the prior lien was created;

(b) second, to the things which have been so transferred without a valuable consideration; and

(c) third, to the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

History: **En. Sec. 3772, Civ. C. 1895; re-en. Sec. 5722, Rev. C. 1907; re-en. Sec. 8237, R.C.M. 1921; Cal. Civ. C. Sec. 2899; Based on Field Civ. C. Sec. 1599; re-en. Sec. 8237, R.C.M. 1935; R.C.M. 1947, 45-203.**

71-3-116. Redemption. Redemption from a lien is made by performing or offering to perform the act for the performance of which it is a security and paying or offering to pay the damages, if any, to which the holder of the lien is entitled for delay.

History: **En. Sec. 3782, Civ. C. 1895; re-en. Sec. 5725, Rev. C. 1907; re-en. Sec. 8240, R.C.M. 1921; Cal. Civ. C. Sec. 2905; Field Civ. C. Sec. 1602; re-en. Sec. 8240, R.C.M. 1935; R.C.M. 1947, 45-303.**

71-3-117. Right to redeem. Except as otherwise provided by the Uniform Commercial Code, every person having an interest in property subject to a lien has a right to redeem it from the lien at any time after the claim is due and before his right of redemption is foreclosed.

History: **En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R.C.M. 1921; Cal. Civ. C. Sec. 2903; re-en. Sec. 8238, R.C.M. 1935; amd. Sec. 11-121, Ch. 264, L. 1963; R.C.M. 1947, 45-301.**

71-3-118. Rights of inferior lienor. One who has a lien inferior to another upon the same property has a right to:

(1) redeem the property in the same manner as its owner might from the superior lien; and

(2) be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

History: **En. Sec. 3781, Civ. C. 1895; re-en. Sec. 5724, Rev. C. 1907; re-en. Sec. 8239, R.C.M. 1921; Cal. Civ. C. Sec. 2904; Field Civ. C. Sec. 1601; re-en. Sec. 8239, R.C.M. 1935; R.C.M. 1947, 45-302.**

71-3-119. Lien accessory to performance. A lien is to be accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

History: **En. Sec. 3790, Civ. C. 1895; re-en. Sec. 5726, Rev. C. 1907; re-en. Sec. 8241, R.C.M. 1921; Cal. Civ. C. Sec. 2909; re-en. Sec. 8241, R.C.M. 1935; R.C.M. 1947, 45-304.**

71-3-120. Effect of partial performance. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

History: **En. Sec. 3793, Civ. C. 1895; re-en. Sec. 5729, Rev. C. 1907; re-en. Sec. 8244, R.C.M. 1921; Cal. Civ. C. Sec. 2912; Field Civ. C. Sec. 1606; re-en. Sec. 8244, R.C.M. 1935; R.C.M. 1947, 45-307.**

71-3-121. Extinction by sale or wrongful conversion. The sale of any property on which there is a lien in satisfaction of the claim secured thereby or, in case of personal property, its wrongful conversion by the person holding the lien extinguishes the lien thereon.

History: **En. Sec. 3791, Civ. C. 1895; re-en. Sec. 5727, Rev. C. 1907; re-en. Sec. 8242, R.C.M. 1921; Cal. Civ. C. Sec. 2910; Field Civ. C. Sec. 1604; re-en. Sec. 8242, R.C.M. 1935; R.C.M. 1947, 45-305.**

71-3-122. Lien extinguished by statute of limitations. A lien is extinguished by the lapse of the time within which, under the provisions of Title 27, an action can be brought upon the principal obligation.

History: En. Sec. 3792, Civ. C. 1895; re-en. Sec. 5728, Rev. C. 1907; re-en. Sec. 8243, R.C.M. 1921; Cal. Civ. C. Sec. 2911; Field Civ. C. Sec. 1605; re-en. Sec. 8243, R.C.M. 1935; R.C.M. 1947, 45-306.

Cross-References

Statutes of limitations, Title 27, ch. 2.

71-3-123. When restoration extinguishes lien. Except as otherwise provided by the Uniform Commercial Code, the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property or a lien thereon in good faith and for a good consideration.

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R.C.M. 1921; Cal. Civ. C. Sec. 2913; Based on Field Civ. C. Sec. 1607; re-en. Sec. 8246, R.C.M. 1935; amd. Sec. 11-122, Ch. 264, L. 1963; R.C.M. 1947, 45-308.

Cross-References

Right of lien creditor, 30-9-301.

When security interest perfected — continuity of perfection, 30-9-303.

71-3-124. Filing costs and attorneys' fees to be recovered on foreclosure of liens. In an action to foreclose any of the liens provided for by parts 3, 4, 5, 6, 8, or 10 of this chapter, the court must allow as costs the money paid for filing and recording the lien and a reasonable attorney's fee in the district and supreme courts, and such costs and attorneys' fees must be allowed to each claimant whose lien is established, and such reasonable attorneys' fees must be allowed to the defendant against whose property a lien is claimed, if such lien be not established.

History: Ap. p. Sec. 1863, C. Civ. Proc. 1895; re-en. Sec. 7166, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1921; re-en. Sec. 9799, R.C.M. 1921; amd. Sec. 1, Ch. 69, L. 1925; amd. Sec. 1, Ch. 19, L. 1929; re-en. Sec. 9799, R.C.M. 1935; Sec. 93-8614, R.C.M. 1947; Ap. p. Sec. 1, Ch. 27, L. 1923; re-en. Sec. 9799.1, R.C.M. 1935; Sec. 93-8615, R.C.M. 1947; Ap. p. Sec. 1864, C. Civ. Proc. 1895; re-en. Sec. 7167, Rev. C. 1907; re-en. Sec. 9800, R.C.M. 1921; re-en. Sec. 9800, R.C.M. 1935; Sec. 93-8616, R.C.M. 1947; Ap. p. Sec. 15, p. 131, L. 1899; re-en. Sec. 5833, Rev. C. 1907; re-en. Sec. 8332, R.C.M. 1921; re-en. Sec. 8332, R.C.M. 1935; Sec. 45-415, R.C.M. 1947; Ap. p. Sec. 9, Ch. 196, L. 1935; re-en. Sec. 8374.9, R.C.M. 1935; Sec. 45-909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 17, L. 1915; re-en. Sec. 8352, R.C.M. 1921; re-en. Sec. 8352, R.C.M. 1935; Sec. 45-602, R.C.M. 1947; R.C.M. 1947, 45-415(part), 45-602, 45-909, 93-8614, 93-8615, 93-8616.

Cross-References

Inclusion of attorney fee in bill of cost, 25-10-302.

71-3-125. Filing of agricultural lien statements. (1) Unless a statement of an agricultural lien has been filed in the office of the secretary of state as provided in this chapter, a buyer who, in ordinary course of business as defined in 30-1-201(9), buys a farm product takes it free of any lien created by this chapter even though the lien is otherwise perfected.

(2) A statement of an agricultural lien is sufficient if it:

(a) gives the names and addresses of the debtor and lienor;

(b) describes the type of lien and its statutory authority;

(c) describes the collateral;

(d) contains the notation by the secretary of state of the date of filing and filing number;

(e) is signed by the lienor;

(f) describes the service or product furnished. If the collateral is farm products, the statement must state the county in which the farm products are located, designated by type of farm product.

(g) states the price or wage agreed upon or, if the price or wage was not agreed upon, the reasonable value of the service or product furnished;

(h) states the amount remaining unpaid;

(i) states the terms and period of employment if it is a farm laborer's lien filed pursuant to part 4 of this chapter;

(j) describes the land upon which seed or grain was or will be sown, planted, or used if it is a lien for seed or grain filed pursuant to part 7 of this chapter;

(k) describes the land upon which the grain or crops were grown and the place the grain or crops are presently stored if it is a thresher's lien filed pursuant to part 8 of this chapter;

(l) describes the land upon which the service was performed if it is a lien for spraying or dusting filed pursuant to part 9 of this chapter; and

(m) states the starting date of insurance coverage if it is a lien filed pursuant to part 7 of this chapter.

(3) The agricultural lien statement must be in the form prescribed by the secretary of state.

(4) The secretary of state shall:

(a) record the agricultural lien statement on the centralized computer system as set forth in 30-9-403; and

(b) establish fees for such recordings as set forth in 30-9-403.

(5) For the purposes of this section, an agricultural lien means a lien under part 4, 7, 8, or 9 of this chapter.

(6) A statement of an agricultural lien or continuation statement that has been filed at the office of the county clerk and recorder lapses on March 31, 1990, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement and all related documents on file with the county clerk and recorder.

History: **En. Sec. 1, Ch. 295, L. 1987; amd. Sec. 1, Ch. 529, L. 1989; amd. Sec. 3, Ch. 335, L. 1993.**

71-3-126 through 71-3-130 reserved.

71-3-131. Acknowledgment of lien satisfaction — penalty. Whenever a lien authorized under this chapter is paid and satisfied or the claim upon which it is based has been found invalid by final order or judgment of a court of competent jurisdiction, it is the duty of the creditors to acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, he is liable to any person injured by such failure for a civil penalty of $100, plus any other damages provided by law.

History: **En. Sec. 1, Ch. 525, L. 1985.**

Cross-References

Indexes to recorded documents, 7-4-2619.

Availability of records, 7-4-2622.

Fees of County Clerk, 7-4-2631.

Part 2

Federal Tax Liens

71-3-201. Short title. This part may be cited as the "Uniform Federal Lien Registration Act".

History: En. Sec. 6, Ch. 228, L. 1967; R.C.M. 1947, 45-1506; amd. Sec. 1, Ch. 396, L. 1983.

71-3-202. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 5, Ch. 228, L. 1967; R.C.M. 1947, 45-1505.

71-3-203. Execution of notices and certificates. Certification by the secretary of the treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any lien, of notices of liens, certificates, or other notices affecting federal liens entitles them to be filed. No other attestation, certification, or acknowledgment is necessary.

History: En. Sec. 2, Ch. 228, L. 1967; R.C.M. 1947, 45-1502; amd. Sec. 2, Ch. 396, L. 1983.

71-3-204. Federal liens — place of filing. (1) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to the liens is situated.

(2) Notices of liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(a) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(b) if the person against whose interest the lien applies is a trust that is not covered by subsection (2)(a), in the office of the secretary of state;

(c) if the person against whose interest the lien applies is the estate of a decedent, in the office of the secretary of state;

(d) in all other cases, in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

History: En. Sec. 1, Ch. 228, L. 1967; R.C.M. 1947, 45-1501; amd. Sec. 3, Ch. 396, L. 1983.

71-3-205. Duties of filing officer. (1) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (2) is presented to the filing officer and:

(a) he is the secretary of state, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of 30-9-403(4) as if the notice were a financing statement within the meaning of the Uniform Commercial Code; or

(b) he is any other officer described in 71-3-204, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(2) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing, he shall:

(a) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files; and

(b) cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(3) If a refiled notice of federal lien referred to in subsection (1) or any of the certificates or notices referred to in subsection (2) is presented for filing with any other filing officer specified in 71-3-204, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate, with the date of filing, in any alphabetical lien index on the line where the original notice of lien is entered.

(4) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate.

History: En. Sec. 3, Ch. 228, L. 1967; R.C.M. 1947, 45-1503; amd. Sec. 4, Ch. 396, L. 1983; amd. Sec. 3, Ch. 156, L. 1987.

Cross-References

Termination statement, 30-9-404.

Information from filing officer, 30-9-407.

Security agreements and termination statements — when destroyed, 30-9-411.

71-3-206. Fees. (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien must be established and deposited in accordance with the provisions of 30-9-403.

(2) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

History: En. Sec. 4, Ch. 228, L. 1967; R.C.M. 1947, 45-1504; amd. Sec. 5, Ch. 396, L. 1983; amd. Sec. 4, Ch. 156, L. 1987; amd. Sec. 74, Ch. 83, L. 1989; amd. Sec. 21, Ch. 420, L. 1993.

71-3-207. Prior filings of tax liens and notices. Filing officers with whom notices of federal tax liens, certificates, and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967", containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

History: En. Sec. 9, Ch. 228, L. 1967; R.C.M. 1947, 45-1507.

Part 3
Liens for Salaries and Wages

71-3-301. Priority when assignment of property made. In all assignments of property made by any person to trustees or assignees on account of the inability of the person, at the time of the assignment, to pay his debts or in proceedings of insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such person, to the amount actually owed and for services rendered within the previous 4 months, are preferred claims and must be paid by such trustees or assignees before any other creditor of the assignor.

History: En. Sec. 2050, 5th Div. Comp. Stat. 1887; amd. Sec. 2150, C. Civ. Proc. 1895; re-en. Sec. 7302, Rev. C. 1907; re-en. Sec. 8351, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1204; re-en. Sec. 8351, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1943; R.C.M. 1947, 45-601.

Cross-References

Priority of certain liens arising by operation of law, 30-9-310.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

71-3-302. Priority in case of death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within 4 months next preceding the death of the employer, in the amount actually owed, are preferred debts under 72-3-807(1)(e) and must be paid before other claims against the estate of the deceased person.

History: En. Sec. 2051, 5th Div. Comp. Stat. 1887; re-en. Sec. 2151, C. Civ. Proc. 1895; re-en. Sec. 7303, Rev. C. 1907; re-en. Sec. 8353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1205; re-en. Sec. 8353, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1943; amd. Sec. 3, Ch. 263,L. 1975; amd. Sec. 25, Ch. 535, L. 1975; R.C.M. 1947, 45-603; amd. Sec. 131, Ch. 370, L. 1987; amd. Sec. 17, Ch. 482, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 482 substituted "72-3-807(1)(e)" for "72-3-807(1)(d)". Amendment effective May 2, 1997.

Cross-References

Classification of claims against estate — priority of payment, 72-3-807.

71-3-303. Priority in cases of execution or attachment. In case of executions, attachments, and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks, or laborers who have claims against the defendant for labor done may give notice of their claims and the amount thereof, sworn to by the person making the claim, to the parties plaintiff and defendant to the action in which such execution, attachment, or other writ has been issued and upon the officer executing the same. Service of notice herein required may be made upon the officer charged with the execution of such writ in one or more cases that may be pending against such person, who shall forthwith serve such notice and claim, by copy, upon the parties plaintiff and defendant, if found in the county where such action is pending, or upon their respective attorneys employed in such case or cases pending.

History: En. Sec. 2052, 5th Div. Comp. Stat. 1887; re-en. Sec. 2152, C. Civ. Proc. 1895; re-en. Sec. 7304, Rev. C. 1907; re-en. Sec. 8354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1206; re-en. Sec. 8354, R.C.M. 1935; R.C.M. 1947, 45-604.

Cross-References

Priority of certain liens arising by operation of law, 30-9-310.

71-3-304. Service of notice. (1) The officer serving said notice and claim shall forthwith, after service of the same, make return thereof showing such service, where and how made.

(2) Service may be made in any case at any time before the actual sale of the property levied upon in such pending action, and unless such claim is disputed by the debtor or a creditor or party plaintiff, such officer must pay such person out of the proceeds of the sale the amount he is entitled to receive for services rendered within the 4 months next preceding the levy of the writ, not exceeding the amount actually owed.

History: En. 2052, 5th Div. Comp. Stat. 1887; amd. Sec. 2153, C. Civ. Proc. 1895; re-en. Sec. 7305, Rev. C. 1907; re-en. Sec. 8355, R.C.M. 1921; re-en. Sec. 8355, R.C.M. 1935; amd. Sec. 3, Ch. 109, L. 1943; R.C.M. 1947, 45-605(part).

71-3-305. Proceeding if claim disputed. (1) If any or all of the claims so presented and claiming preference under this part are disputed by either the debtor or a creditor, the person presenting the same must commence an action within 10 days after notice of such dispute is served upon such claimant, as provided in subsection (2), for the recovery thereof. The officer must retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim and costs until the final determination of such action. In case judgment be had, the costs are a preferred claim, which may include a reasonable attorney's fee.

(2) The debtor or creditor intending to dispute any claim presented under the provisions of 71-3-303 shall, within 10 days after receiving notice of such claim, serve upon the claimant and officer holding such execution, attachment, or other writ a statement in writing, verified by the oath of the debtor or person disputing such claim for services, setting forth that no part of said claim, not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the 4 months next preceding the levy of the execution, attachment, or other writ, as the case may be.

(3) If the claimant brings suit on a claim which is disputed in part only and fails to recover a sum exceeding that which was admitted to be due, he shall not recover costs, but costs shall be adjudged against him. Where such claimant fails to bring suit upon his claim, which is disputed in part only, he shall be deemed to have waived that portion of his claim disputed.

History: (1)En. 2052, 5th Div. Comp. Stat. 1887; amd. Sec. 2153, C. Civ. Proc. 1895; re-en. Sec. 7305, Rev. C. 1907; re-en. Sec. 8355, R.C.M. 1921; re-en. Sec. 8355, R.C.M. 1935; amd. Sec. 3, Ch. 109, L. 1943; Sec. 45-605, R.C.M. 1947; (2), (3)En. Sec. 2053, 5th Div. Comp. Stat. 1887; re-en. Sec. 2154, C. Civ. Proc. 1895; re-en. Sec. 7306, Rev. C. 1907; re-en. Sec. 8356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1207; re-en. Sec. 8356, R.C.M. 1935; amd. Sec. 4, Ch. 109, L. 1943; Sec. 45-606, R.C.M. 1947; R.C.M. 1947, 45-605(part), 45-606.

Cross-References

Form of ordinary oath, 1-6-102.

Affirmation or declaration in lieu of oath, 1-6-104.

71-3-306. Preferred claims — no dismissal of original action without consent. Persons having the preferred claims mentioned in this part are entitled to a lien upon the property attached or levied upon, and if said claims are not disputed or if a judgment is recovered for the same, the officer must pay such claims out of the property, and the original action cannot be dismissed without the consent of the owners of such preferred claims.

History: En. Sec. 2155, C. Civ. Proc. 1895; re-en. Sec. 7307, Rev. C. 1907; re-en. Sec. 8357, R.C.M. 1921; re-en. Sec. 8357, R.C.M. 1935; R.C.M. 1947, 45-607.

71-3-307. Liens not affected prior to four months of claim. Nothing in this part shall be construed so as to affect any lien, encumbrance, or mortgage held by any creditor of such employer prior to said 4 months.

History: En. Sec. 2054, 5th Div. Comp. Stat. 1887; re-en. Sec. 2156, C. Civ. Proc. 1895; re-en. Sec. 7308, Rev. C. 1907; re-en. Sec. 8358, R.C.M. 1921; re-en. Sec. 8358, R.C.M. 1935; amd. Sec. 5, Ch. 109, L. 1943; R.C.M. 1947, 45-608.

Part 4

Farm Laborers' Liens

71-3-401. Who may have lien — priority. (1) Any person who performs services for another in the capacity of a farm or ranch laborer has a lien on all crops of every kind grown, raised, or harvested by the person for whom the services were performed during that time as security for the payment of any wages due or owing to such persons for services so performed.

(2) The lien has priority over all other liens, chattel mortgages, or encumbrances except feed sufficient for 3 months for 1 horse, 2 cows and their calves, 4 hogs, and 50 domestic fowls and seed grain and threshers' liens. The wages for which a lien may be claimed may not be in excess of $1,000 or for a period of time exceeding 60 days next preceding the date of filing the lien. In case any such person without cause quits his employment before the expiration of the time for which he is employed, he is not entitled to a lien as herein provided.

(3) If several persons have or obtain liens under the provisions of this part against property of the same employer, they have no priority among themselves but all must be paid pro rata from the proceeds of any foreclosure sale according to the provisions of this part.

History: En. Secs. 1, 4, Ch. 196, L. 1935; re-en. Secs. 8374.1, 8374.4, R.C.M. 1935; R.C.M. 1947, 45-901, 45-904; amd. Sec. 3, Ch. 11, L. 1979.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority of purchase money mortgage, 71-3-114.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-402. How lien obtained. In order to acquire a lien, as specified in 71-3-401, the person performing services shall, within 30 days after the services are fully performed, file in the office of the secretary of state a statement of agricultural lien, as provided in 71-3-125, and the address to which notice must be directed as required by 71-3-404.

History: En. Sec. 2, Ch. 196, L. 1935; re-en. Sec. 8374.2, R.C.M. 1935; R.C.M. 1947, 45-902; amd. Sec. 2, Ch. 295, L. 1987; amd. Sec. 2, Ch. 529, L. 1989.

71-3-403. Repealed. Sec. 8, Ch. 529, L. 1989.

History: En. Sec. 3, Ch. 196, L. 1935; re-en. Sec. 8374.3, R.C.M. 1935; R.C.M. 1947, 45-903; amd. Sec. 1, Ch. 172, L. 1981.

71-3-404. Notice to other lienholders. (1) A person intending to foreclose a lien secured under the provisions of this part shall give a written notice to the owner or the person against whom the lien is claimed and all chattel mortgagees, encumbrancers, and all other lienholders who appear on record in the office of the secretary of state that in not less than 10 days from the date of notice he will institute proceedings for the foreclosure of his lien. Any other labor lienholder to whom notice is given may join in the foreclosure proceedings and is entitled to a pro rata share of the proceeds of the foreclosure sale, as provided in this part. However, if the notified labor lienholder does not join in the proceedings, he is not entitled to share pro rata in the proceeds of the sale.

(2) The lien notice required herein must be given by certified mail and directed to the last-known address of the owner or the person against whom the lien is claimed and to the addresses of the chattel mortgagees, encumbrancers, and all other lienholders as their addresses appear of record. The return of the foreclosure sale must be accompanied by proof of the giving of notice as required to be given in this section.

History: En. Sec. 5, Ch. 196, L. 1935; re-en. Sec. 8374.5, R.C.M. 1935; R.C.M. 1947, 45-905; amd. Sec. 3, Ch. 295, L. 1987; amd. Sec. 3, Ch. 529, L. 1989.

Cross-References

Filing costs and attorney fees — recovered on foreclosure of liens, 71-3-124.

71-3-405. Limitations of actions to foreclose liens. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 90 days from the filing of the lien.

History: En. Sec. 10, Ch. 196, L. 1935; re-en. Sec. 8374.10, R.C.M. 1935; R.C.M. 1947, 45-910.

71-3-406. Rules of practice. (1) Except as otherwise provided in this part, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this part.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 6, Ch. 196, L. 1935; re-en. Sec. 8374.6, R.C.M. 1935; Sec. 45-906, R.C.M. 1947; (2)En. Sec. 7, Ch. 196, L. 1935; re-en. Sec. 8374.7, R.C.M. 1935; Sec. 45-907, R.C.M. 1947; R.C.M. 1947, 45-906, 45-907.

71-3-407. Parties. All persons interested in the matter in controversy or in property charged with the lien or having liens thereon may be made parties.

History: En. Sec. 8, Ch. 196, L. 1935; re-en. Sec. 8374.8, R.C.M. 1935; R.C.M. 1947, 45-908.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

71-3-408. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge said lien within 30 days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 11, Ch. 196, L. 1935; re-en. Sec. 8374.11, R.C.M. 1935; amd. Sec. 11-126, Ch. 264, L. 1963; R.C.M. 1947, 45-911; amd. Sec. 4, Ch. 295, L. 1987.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

Part 5

Construction Liens

71-3-501. Repealed. Sec. 17, Ch. 202, L. 1987.

History: En. Sec. 1, p. 332, Bannack Stat.; amd. Sec. 1, p. 509, Cod. Stat. 1871; re-en. Sec. 820, 5th Div. Rev. Stat. 1879; amd. Sec. 1370, 5th Div. Comp. Stat. 1887; amd. Sec. 2130, C. Civ. Proc. 1895; re-en. Sec. 7290, Rev. C. 1907; re-en. Sec. 8339, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1183; amd. Sec. 1, Ch. 23, L. 1925; re-en. Sec. 8339, R.C.M. 1935; amd. Sec. 1, Ch. 408, L. 1971; R.C.M. 1947, 45-501.

71-3-502. Repealed. Sec. 17, Ch. 202, L. 1987.

History: (1) thru (3)En. Secs. 8 and 9, p. 334, Bannack Stat.; re-en. Secs. 8 and 9, p. 511, Cod. Stat. 1871; amd. Secs. 1 and 2, p. 238, L. 2877; re-en. Sec. 827, 5th Div. Rev. Stat. 1879; amd. Sec. 1374, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 71, Ex. L. 1887; en. Sec. 2133, C. Civ. Proc. 1895; re-en. Sec. 7293, Rev. C. 1907; re-en. Sec. 8342, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1185; re-en. Sec. 8342, R.C.M. 1935; Sec. 45-504, R.C.M. 1947; (4)En. Sec. 10, p. 334, Bannack Stat.; re-en. Sec. 10, p. 511, Cod. Stat. 1871; amd. Sec. 3, p. 238, L. 1877; amd. Sec. 829, 5th Div. Rev. Stat. 1879; amd. Sec. 1376, 5th Div. Comp. Stat. 1887; amd. Sec. 2135, C. Civ. Proc. 1895; re-en. Sec. 7295, Rev. C. 1907; re-en. Sec. 8344, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1186; re-en. Sec. 8344, R.C.M. 1935; Sec. 45-506, R.C.M. 1947; R.C.M. 1947, 45-504(part), 45-506.

71-3-503. Repealed. Sec. 17, Ch. 202, L. 1987.

History: En. Sec. 1387, 5th Div. Comp. Stat. 1887; amd. Sec. 3, p. 72, Ex. L. 1887; amd. Sec. 2140, C. Civ. Proc. 1895; re-en. Sec. 7300, Rev. C. 1907; re-en. Sec. 8349, R.C.M. 1921; re-en. Sec. 8349, R.C.M. 1935; amd. Sec. 24, Ch. 535, L. 1975; R.C.M. 1947, 45-511.

71-3-504. Renumbered 71-3-561 by Code Commissioner, 1987.

71-3-505. Renumbered 71-3-562 by Code Commissioner, 1987.

71-3-506 through 71-3-510 reserved.

71-3-511. Repealed. Sec. 17, Ch. 202, L. 1987.

History: En. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 8340, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; R.C.M. 1947, 45-502(1), (2).

71-3-512. Renumbered 71-3-533 by Code Commissioner, 1987.

71-3-513. Renumbered 71-3-534 by Code Commissioner, 1987.

71-3-514. Repealed. Sec. 17, Ch. 202, L. 1987.

History: (1)En. Secs. 8 and 9, p. 334, Bannack Stat.; re-en. Secs. 8 and 9, p. 511, Cod. Stat. 1871; amd. Secs. 1 and 2, p. 238, L. 1877; re-en. Sec. 827, 5th Div. Rev. Stat. 1879; amd. Sec. 1374, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 71, Ex. L. 1887; en. Sec. 2133, C. Civ. Proc. 1895; re-en. Sec. 7293, Rev. C. 1907; re-en. Sec. 8342, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1185; re-en. Sec. 8342, R.C.M. 1935; Sec. 45-504, R.C.M. 1947; (2)En. Sec. 9, p. 334, Bannack Stat.; re-en. Sec. 9, p. 511, Cod. Stat. 1871; re-en. Sec. 828, 5th Div.

Rev. Stat. 1879; re-en. Sec. 1375, 5th Div. Comp. Stat. 1887; amd. Sec. 2134, C. Civ. Proc. 1895; re-en. Sec. 7294, Rev. C. 1907; re-en. Sec. 8343, R.C.M. 1921; re-en. Sec. 8343, R.C.M. 1935; Sec. 45-505, R.C.M. 1947; R.C.M. 1947, 45-504(part), 45-505.

71-3-515. Renumbered 71-3-537 by Code Commissioner, 1987.

71-3-516. Renumbered 71-3-551 by Code Commissioner, 1987.

71-3-517. Renumbered 71-3-552 by Code Commissioner, 1987.

71-3-518. Renumbered 71-3-553 by Code Commissioner, 1987.

71-3-519. Renumbered 71-3-563 by Code Commissioner, 1987.

71-3-520 reserved.

71-3-521. Scope. This part creates and provides for the attachment and enforceability of a construction lien against real estate in favor of a person furnishing services or materials under a real estate improvement contract. A nonconsensual lien against real estate for improvements made thereon may not arise except as provided in this part.

History: En. Sec. 1, Ch. 202, L. 1987.

71-3-522. Definitions. (1) "Commencement of work" means the date of the first visible change in the physical condition of the real estate caused by the first person furnishing services or materials pursuant to a particular real estate improvement contract.

(2) "Construction lien" or "lien" means a lien against real estate arising under this part.

(3) (a) "Contract price" means the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the contract, increased or diminished by:

(i) the price of change orders or extras;

(ii) any amounts attributable to altered specifications; or

(iii) a breach of contract, including but not limited to defects in workmanship or materials.

(b) If no price is agreed upon by the contracting parties, the contract price means the reasonable value of all services or materials covered by the contract.

(4) (a) "Contracting owner" means a person who owns an interest in real estate and who, personally or through an agent, enters into an express or implied contract for the improvement of the real estate.

(b) For the purpose of determining whether a person is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary:

(i) between employer and employee;

(ii) between spouses;

(iii) between joint tenants; and

(iv) among tenants in common.

(5) (a) "Real estate improvement contract" means an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of the real estate, including:

(i) alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;

(ii) construction or installation on, above, or below the surface of land;

(iii) demolition, repair, remodeling, or removal of a structure previously constructed or installed;

(iv) seeding, sodding, or other landscape operation;

(v) surface or subsurface testing, boring, or analysis; and

(vi) preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of the real estate, regardless of whether they are used to produce a change in the physical condition of the real estate.

(b) For the purpose of claiming a construction lien, a real estate improvement contract does not include:

(i) a contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on the land or a similar contract in which the activity is primarily for the purpose of making the materials available for sale or use; or

(ii) a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for planting of crops.

History: En. Sec. 2, Ch. 202, L. 1987.

71-3-523. Who may claim a construction lien — limitation. A person who furnishes services or materials pursuant to a real estate improvement contract may claim a construction lien, only to the extent provided in this part, to secure the payment of his contract price.

History: En. Sec. 3, Ch. 202, L. 1987.

71-3-524. Limitation of lien for materials supplied. (1) A lien for furnishing materials arises only if:

(a) (i) the materials are supplied with the intent that they be used in the course of construction of or incorporated into the improvement in connection with which the lien arises; and

(ii) the intent described in subsection (1)(a)(i) can be shown by a contract of sale, a delivery order, delivery to the site by the lien claimant or at his direction, or by other evidence; and

(b) the materials are:

(i) incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) specifically fabricated for incorporation into the improvement and not readily resalable in the ordinary course of the fabricator's business, even though the materials are not actually incorporated into the improvement;

(iii) used for the construction or operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) tools, appliances, or machinery used on the particular improvement. However, a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3).

(2) The delivery of materials to the site of the improvement, whether by the lien claimant or by another, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subsection (1)(b)(iv) is limited as follows:

(a) if they are rented, the lien is for the reasonable rental value for the period of actual use, including any reasonable periods of nonuse provided for in the rental contract; and

(b) if they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value after the completion of the improvement on which they were used.

History: **En. Sec. 4, Ch. 202, L. 1987.**

71-3-525. Extent of lien. (1) A construction lien extends to the interest of the contracting owner in the real estate, as the interest exists at the commencement of work or is thereafter acquired in the real estate, subject to the provisions of this section.

(2) (a) If an improvement is located wholly on one or more platted lots belonging to the contracting owner, the lien applies to the improvement and to the lots on which the improvement is located.

(b) If an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to the smallest identifiable tract or parcel of land on which the improvement is located.

(3) If the improvement is to leased premises, the lien attaches to the improvement and to the leasehold term. Except as provided in subsection (4), it does not attach to the lessor's interest unless he contracted for or agreed to the improvement before it was begun.

(4) (a) A construction lien is not impaired to the extent of the value of the work or improvement that is severable from the real estate if the improvement is to premises held by:

(i) a contracting owner who owns less than a fee simple interest; or

(ii) a lessee and the lease is forfeited by the lessee.

(b) If the work or improvement may be removed without harm to the rest of the real estate, the lienholder may have the value determined, the work or improvement sold separately, and the proceeds delivered to him to satisfy the construction lien. The purchaser shall remove the work or improvement within 45 days of the sale.

(5) If a contracting owner contracts for improvements on real estate not owned by him as part of an improvement on his real estate or for the purpose of directly benefiting his real estate, there is a lien against the contracting owner's real estate being improved or directly benefited in favor of persons furnishing services or materials to the same extent as if the improvement had been on the contracting owner's real estate.

History: **En. Sec. 5, Ch. 202, L. 1987.**

71-3-526. Amount of lien. (1) A person who has furnished services or materials pursuant to a real estate improvement contract is entitled to a lien for the unpaid part of his contract price, subject to the provisions of 71-3-524.

(2) A person's lien is reduced by the sum of the liens of persons claiming construction liens through him.

History: **En. Sec. 6, Ch. 202, L. 1987.**

71-3-527 through 71-3-530 reserved.

71-3-531. Notice of right to claim lien required — exceptions. (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) a person who furnishes services or materials directly to the owner at his request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of his right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), this notice must be given no later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting party from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section must be given no later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to him. Notice by certified mail is effective on the date the notice is mailed. If the notice is delivered, written acknowledgement of receipt must be obtained from the owner. A person may not claim a construction lien unless he has complied with this subsection.

(6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy must be filed no later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

(c) The continuation statement must include:

(i) the clerk and recorder's file number of the notice;

(ii) the date on which the notice originally was filed; and

(iii) the name of the person to whom the original notice was given.

(d) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time he files his lien.

(7) At the request of any subcontractor or material supplier who may claim a lien through him, a person shall furnish to the requestor within 5 business days:

(a) a description sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner.

History: En. Sec. 7, Ch. 202, L. 1987; amd. Sec. 1, Ch. 291, L. 1989; amd. Sec. 1, Ch. 484, L. 1991.

71-3-532. Content of notice of right to claim lien. (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information and be in substantially the following form:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To: .... Date of mailing: ....
(Owner)

....
(Owner's address)

This is to inform you that .... has begun to provide .... (description of services or materials) ordered by .... for improvements to property you own. The property is located at ....

A lien may be claimed for all services and materials furnished to you if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given. However, if a regulated lender has provided the funds for the services or materials described in this notice, the notice may be given 45 days after the date the services or materials are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 45-day period before the date the notice is given.

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

This notice has been sent to you by:

NAME:..	IF YOU HAVE ANY QUESTIONS
ADDRESS:	ABOUT THIS NOTICE, PLEASE
TELEPHONE:.................................	CALL US

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to claim a lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

— RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

— LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

— WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to claim a lien.

— OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to claim a lien have been paid or have waived the right to claim a lien against your property.

— CONSULT an attorney, a professional escrow company, or your mortgage lender.

History: En. Sec. 8, Ch. 202, L. 1987; amd. Sec. 2, Ch. 484, L. 1991.

71-3-533. Notice of completion. (1) The contracting owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The following acts or events constitute completion of any work or improvement for the purpose of filing a notice of completion:

(a) the written acceptance by the contracting owner, his agent, or representative of the building, improvement, or structure. The filing of a notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.

(b) the cessation from labor for 30 days upon any building, improvement, or structure, or the alteration, addition to, or repair thereof.

(3) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county clerk and recorder of the county where the property is situated and the notice shall set forth:

(a) the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration;

(b) the contracting owner's name and address and the nature of the title, if any, of the person signing the notice;

(c) a description of the property sufficient for identification;

(d) the name of the contractor, if any.

(4) The notice shall be verified by the contracting owner or his agent.

(5) A copy of the notice of completion shall be published once each week for 3 successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

(6) The contracting owner shall give a copy of the notice of completion to any person who has given the contracting owner a notice of a right to claim a lien.

History: (1), (3) thru (5)En. Sec. 3, Ch. 408, L. 1971; Sec. 45-502.1, R.C.M. 1947; (2)En. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 8340, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; Sec. 45-502, R.C.M. 1947; R.C.M. 1947, 45-502(3), 45-502.1; amd. Sec. 13, Ch. 202, L. 1987; Sec. 71-3-512, MCA 1985; redes. 71-3-533 by Code Commissioner, 1987.

71-3-534. Filing with county clerk — notification of owner. (1) The county clerk must endorse upon every lien the day of its filing and make an abstract thereof in a book by him to be kept for that purpose and properly indexed, containing the date of the filing, the name of the person holding the lien, the amount thereof, the name of the person against whose property the lien is filed, and the description of the property to be charged with same.

(2) The clerk shall not file the lien unless there is attached thereto a certification by the lien claimant or his agent that a copy of the lien has been served upon each owner of record of the property named in the lien. Service shall be made by personal service on each owner or by mailing a copy of the lien by certified or registered mail with return receipt requested to each owner's last known address. The certification shall state whether service was made by delivery of certified or registered mail.

History: En. Sec. 7, p. 333, Bannack Stat.; re-en. Sec. 7, p. 510, Cod. Stat. 1871; amd. Sec. 2, p. 84, L. 1874; re-en. Sec. 826, 5th Div. Rev. Stat. 1879; re-en. Sec. 1373, 5th Div. Comp. Stat. 1887; amd. Sec. 2132, C. Civ. Proc. 1895; re-en. Sec. 7292, Rev. C. 1907; re-en. Sec. 8341, R.C.M. 1921; re-en. Sec. 8341, R.C.M. 1935; R.C.M. 1947, 45-503; amd. Sec. 1, Ch. 515, L. 1981; Sec. 71-3-513, MCA 1985; redes. 71-3-534 by Code Commissioner, 1987.

Cross-References

Definition of registered mail, 1-1-202.

71-3-535. Attachment of lien — filing. (1) A person's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises, he has filed a lien not later than 90 days after:

(a) his final furnishing of services or materials; or

(b) the owner files a notice of completion pursuant to 71-3-533.

(2) (a) The lien must be filed with the county clerk and recorder of the county in which the improved real estate is located.

(b) The person claiming the lien must certify to the county clerk and recorder that a copy of the lien has been served on the owner of record as provided in 71-3-534(2).

(3) The lien statement must contain:

(a) the name and address of the person claiming the lien;

(b) a description of the real property against which the lien is claimed sufficient to identify it;

(c) the name of the contracting owner;

(d) the name and address of the party with whom the person claiming the lien contracted to furnish services or materials;

(e) a description of the services or materials provided;

(f) the amount unpaid for services or materials or, if no amount is fixed by the contract, a good faith estimate of the amount unpaid, designated as an estimate;

(g) (i) the date on which the services or materials were first furnished; and

(ii) the date on which the services or materials were last furnished; and

(h) a declaration that a notice of a right to claim a lien was given to the contracting owner or an explanation of why such notice was not required.

(4) A lien notice that is filed pursuant to this section before the person claiming the lien has substantially furnished services or materials pursuant to a real estate improvement contract is not effective to create a construction lien unless the lien claimant is prevented from fulfilling his obligation because of the fault of another person.

(5) Except as provided in subsection (6), a lien attaches at the commencement of work as defined in 71-3-522.

(6) A lien attaches when it is filed if it is for the preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures that are not used incident to producing a change in the physical condition of the real estate.

History: **En. Sec. 9, Ch. 202, L. 1987.**

71-3-536. Content of lien notice. The notice for the lien provided for in 71-3-535 may be filed in substantially this form:

Construction Lien

I, ... (insert name and address of person claiming the construction lien), claim a construction lien pursuant to Title 71, chapter 3, of the Montana Code Annotated.

I claim this lien against .... (give description of the real property against which the lien is claimed sufficient to identify it). The contracting owner is

.... (insert name of the person who owns the real estate and name of the person who entered into the contract to improve it).

At the request of .... (give name and address of party with whom person claiming the lien contracted to furnish services or materials), I provided the following: .... (give description of the services or materials provided). The amount remaining unpaid is .... (insert the amount unpaid; if no amount was fixed by the contract, give your good faith estimate of the amount and identify it as an estimate).

I first furnished these services or materials on .... (give date) and last furnished services or materials on .... (give date; if the date has not yet arrived, insert an estimate of the date on which services or materials will be last furnished and identify the date as an estimate).

I gave notice of the right to claim a lien as required by 71-3-531 on .... (give date) to .... (give name of contracting owner). .... (If it is not required to give a notice of the right to claim a lien, state the reason it is not required.)

History: **En. Sec. 10, Ch. 202, L. 1987.**

71-3-537. Acknowledgment of satisfaction of lien — penalty. Whenever any indebtedness which is a lien upon any such real estate, structure, building, or other improvement is paid and satisfied, it is the duty of the creditors to acknowledge satisfaction thereof as in case of a mortgage; and if any creditor fails to acknowledge satisfaction, as aforesaid, he is liable to any person injured by such failure to the amount of such injury and the costs of action.

History: **En. Sec. 841, 5th Div. Rev. Stat. 1879; re-en. Sec. 1385, 5th Div. Comp. Stat. 1887; amd. Sec. 2141, C. Civ. Proc. 1895; re-en. Sec. 7301, Rev. C. 1907; re-en. Sec. 8350, R.C.M. 1921; re-en. Sec. 8350, R.C.M. 1935; R.C.M. 1947, 45-512; Sec. 71-3-515, MCA 1985; redes. 71-3-537 by Code Commissioner, 1987.**

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-538 through 71-3-540 reserved.

71-3-541. Priority among holders of construction liens. (1) There is equal priority between or among construction lien claimants who contribute to the same real estate improvement project, regardless of the date on which each lien claimant first contributed services or materials and regardless of the date on which he filed his notice of lien. When the proceeds of a foreclosure sale are not sufficient to pay all construction lien claimants in full, each claimant will receive a pro rata share of the proceeds based on the amount of his respective lien.

(2) Construction liens attaching at different times have priority in the order of attachment.

History: **En. Sec. 11, Ch. 202, L. 1987.**

71-3-542. Priority of construction liens as against claims other than construction lien claims. (1) A construction lien arising under this part has priority over any other interest, lien, mortgage, or encumbrance that may attach to the building, structure, or improvement or on the real property on which the building, structure, or improvement is located and which is filed after the construction lien attaches.

(2) An interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches has priority over a construction lien arising under this part, except as provided in subsections (3) and (4).

(3) A construction lien has priority, to the extent of the value of the work or improvement that is severable, over an interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches. If the work or improvement may be removed without harm to the rest of the real property, the lienholder may have the value determined, the work or improvement sold separately on foreclosure, and the proceeds delivered to him to satisfy the construction lien.

(4) A construction lien has priority over any interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches if that interest, lien, mortgage, or encumbrance was taken to secure advances made for the purpose of paying for the particular real estate improvement being liened.

History: En. Sec. 12, Ch. 202, L. 1987.

71-3-543 through 71-3-550 reserved.

71-3-551. Substitution of bond allowed — filing — amount — condition. (1) Whenever a construction lien has been filed upon real property or any improvements thereon, the contracting owner of any interest in such property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose such lien, file a bond with the clerk of the district court in the county in which such property is situated or, if such property is situated in more than one county, with the clerk of the district court of any county in which a part of such property is situated.

(2) Such bond shall be in an amount 1 1/2 times the amount of the lien and shall be either in cash or written by a corporate surety company. If written by a corporate surety, such bond shall be approved by a judge of the district court with which such bond is filed.

(3) The bond shall be conditioned that if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, attorneys' fees, and other sums which such claimant would be entitled to recover upon the foreclosure of a lien against the principal.

History: En. Sec. 1, Ch. 338, L. 1971; R.C.M. 1947, 45-513; amd. Sec. 14, Ch. 202, L. 1987; Sec. 71-3-516, MCA 1985; redes. 71-3-551 by Code Commissioner, 1987.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

71-3-552. Lien discharged upon filing of bond. Upon the filing of a bond as provided in 71-3-551, the lien against the real property shall forthwith be discharged and released in full and the bond shall be substituted for such lien.

History: En. Sec. 2, Ch. 338, L. 1971; R.C.M. 1947, 45-514; Sec. 71-3-517, MCA 1985; redes. 71-3-552 by Code Commissioner, 1987.

71-3-553. Action upon bond — period of limitation same. (1) When a bond is filed as provided in 71-3-551, the person filing such lien may bring an action upon the bond.

(2) Such action shall be commenced within the time allowed for the commencement of an action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure shall apply to an action upon such bond as it would had no bond been filed.

History: En. Sec. 3, Ch. 338, L. 1971; R.C.M. 1947, 45-515; Sec. 71-3-518, MCA 1985; redes. 71-3-553 by Code Commissioner, 1987.

71-3-554 through 71-3-560 reserved.

71-3-561. Parties. All persons interested in the matter in controversy or in property charged with the lien or having liens thereon may be made parties.

History: En. Sec. 2138, C. Civ. Proc. 1895; re-en. Sec. 7298, Rev. C. 1907; re-en. Sec. 8347, R.C.M. 1921; re-en. Sec. 8347, R.C.M. 1935; R.C.M. 1947, 45-509; Sec. 71-3-504, MCA 1985; redes. 71-3-561 by Code Commissioner, 1987.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P.
(see Title 25, ch. 20).

71-3-562. Limitation on actions. All actions under this part must be commenced within 2 years from the date of the filing of the lien.

History: En. Sec. 2139, C. Civ. Proc. 1895; re-en. Sec. 7299, Rev. C. 1907; amd. Sec. 1, Ch. 127, L. 1921; re-en. Sec. 8348, R.C.M. 1921; re-en. Sec. 8348, R.C.M. 1935; R.C.M. 1947, 45-510; Sec. 71-3-505, MCA 1985; redes. 71-3-562 by Code Commissioner, 1987.

71-3-563. Rules of practice. (1) Except as otherwise provided in this part, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this part.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 2136, C. Civ. Proc. 1895; re-en. Sec. 7296, Rev. C. 1907; re-en. Sec. 8345, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1198; re-en. Sec. 8345, R.C.M. 1935; Sec. 45-507, R.C.M. 1947; (2)En. Sec. 2137, C. Civ. Proc. 1895; re-en. Sec. 7297, Rev. C. 1907; re-en. Sec. 8346, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1199; re-en. Sec. 8346, R.C.M. 1935; Sec. 45-508, R.C.M. 1947; R.C.M. 1947, 45-507, 45-508; Sec. 71-3-519, MCA 1985; redes. 71-3-563 by Code Commissioner, 1987.

Cross-References

Civil Procedure, Title 25.

Part 6

Loggers' Liens

71-3-601. Definition of lumber — who may have lien. (1) The term "lumber", as used in this part, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from sawlogs or other timber.

(2) Every person, general partnership, limited partnership, corporation, or association performing labor upon, or who shall assist in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood, or

other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber in said claim or lien described, whether such work or labor was done at the instance of the owner of the same or his agent or a contractor or subcontractor or any person in behalf of such owner or his agent or a contractor or subcontractor. The cook in a logging camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned.

(3) Every person performing work or labor or assisting in manufacturing sawlogs and other timber into lumber and shingles has a lien upon such lumber while the same remains at the mill where it was manufactured or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner.

(4) Any person who shall permit another to go upon his timberland and cut thereon sawlogs, piling, railroad ties, cordwood, or other timber has a lien upon the same for the price agreed to be paid for such privilege or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price.

History: (1), (3)En. Sec. 2, p. 127, L. 1899; re-en. Sec. 5820, Rev. C. 1907; re-en. Sec. 8319, R.C.M. 1921; re-en. Sec. 8319, R.C.M. 1935; Sec. 45-402, R.C.M. 1947; (2)En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R.C.M. 1921; Cal. Civ. C. Sec. 3065; re-en. Sec. 8318, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1967; Sec. 45-401, R.C.M. 1947; (4)En. Sec. 3, p. 127, L. 1899; re-en. Sec. 5821, Rev. C. 1907; re-en. Sec. 8320, R.C.M. 1921; re-en. Sec. 8320, R.C.M. 1935; Sec. 45-403, R.C.M. 1947; R.C.M. 1947, 45-401, 45-402, 45-403.

71-3-602. Priority. The liens provided for in this part are preferred liens and prior to any other liens, and no sale or transfer of any sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this part, those for work and labor shall be preferred. As between liens for work and labor claimed by several laborers on the same logs or lot of logs, the claims for work and labor done or performed on the identical logs proceeded against to the extent that said logs can be identified shall be preferred as against the general claims of liens for work and labor recognized and provided for in this part.

History: En. Sec. 4, p. 127, L. 1899; re-en. Sec. 5822, Rev. C. 1907; re-en. Sec. 8321, R.C.M. 1921; re-en. Sec. 8321, R.C.M. 1935; R.C.M. 1947, 45-404.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-603. Extent of liens. (1) The person rendering the service or doing the work or labor named in 71-3-601(1) through (3) is only entitled to the liens as provided herein for services, work, or labor for the period of 3 calendar months, or any part thereof next preceding the filing of the claim, as provided in 71-3-605.

(2) The person granting the privilege mentioned in 71-3-601(4) is only entitled to the lien as provided therein for sawlogs, piling, railroad ties, cordwood, or other timber cut during the 3 months next preceding the filing of the claim, as provided in 71-3-606.

History: (1)En. Sec. 5, p. 128, L. 1899; re-en. Sec. 5823, Rev. C. 1907; re-en. Sec. 8322, R.C.M. 1921; re-en. Sec. 8322, R.C.M. 1935; Sec. 45-405, R.C.M. 1947; (2)En. Sec. 6, p. 128, L. 1899; re-en. Sec. 5824, Rev. C. 1907; re-en. Sec. 8323, R.C.M. 1921; re-en. Sec. 8323, R.C.M. 1935; Sec. 45-406, R.C.M. 1947; R.C.M. 1947, 45-405, 45-406; amd. Sec. 132, Ch. 370, L. 1987.

71-3-604. Duration of lien. No lien provided for in this part binds any sawlogs, piling, railroad ties, cordwood, or other timber or lumber and shingles for a longer period than 8 calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court within that time to enforce the same. However, in case such civil action so commenced should for any cause, other than the merits, be dismissed, then the lien shall continue for the term of 1 calendar month, if the 8 months have expired to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of 8 months hereinbefore stated.

History: En. Sec. 10, p. 129, L. 1899; re-en. Sec. 5828, Rev. C. 1907; re-en. Sec. 8327, R.C.M. 1921; re-en. Sec. 8327, R.C.M. 1935; R.C.M. 1947, 45-410.

71-3-605. How to obtain lien — form of claim. (1) Every person, within 30 days after the close of the rendition of the services or after the close of the work or labor mentioned in 71-3-601, claiming the benefit hereof must file for record with the county in which such sawlogs, piling, railroad ties, cordwood, or other timber were cut or in which such lumber or shingles were manufactured a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any. In case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth. It shall also contain a description of the property to be charged with a lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true.

(2) The claim shall be substantially in the following form:

...., Claimant, vs. ....

Notice is hereby given that .... of .... County, state of Montana, claims a lien upon a .... of ...., being about .... in quantity, which were cut or manufactured in .... County, state of Montana, are marked thus ...., and are now lying in a .... for labor performed upon and assistance rendered in .... said ....; that the name of the owner or reputed owner is ....; that .... employed said .... to perform such labor and render such assistance upon the following terms and conditions, to wit: The said .... agreed to pay the said .... for such labor and assistance ....; that said contract has been faithfully performed and fully complied with on the part of said ...., who performed labor upon and assisted in .... said .... for a period of ....; that said labor and assistance were so performed and rendered upon said

.... between the .... day of .... and the .... day of ...., and the rendition of said service was closed on the .... day of ...., and 30 days have not elapsed since that time; that the amount of claimant's demand for said services is ....; that no part thereof has been paid except ...., and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ...., in which amount he claims a lien upon said ....; that said .... also claims a lien on all said .... now owned by said .... of said county, to secure payment for the work and labor performed in obtaining or securing the said logs, piling, railroad ties, cordwood, or other timber, lumber, or shingles herein described.

...., Claimant.

State of Montana,
County of ....

...., being first duly sworn, on oath says that he is .... named in the foregoing claim, has heard the same read, and knows the contents thereof, and believes the same to be true.

....

Subscribed and sworn to before me this .... day of ....

....

History: **En. Sec. 7, p. 128, L. 1899; re-en. Sec. 5825, Rev. C. 1907; re-en. Sec. 8324, R.C.M. 1921; re-en. Sec. 8324, R.C.M. 1935; R.C.M. 1947, 45-407.**

Cross-References

Form of ordinary oath, 1-6-102.

Affirmation or declaration in lieu of oath, 1-6-104.

71-3-606. Claim for lien of landowner same. Every person mentioned in 71-3-601(4) claiming the benefit must file for record with the county clerk of the county in which such sawlogs, piling, railroad ties, cordwood, or other timber were cut a claim in substance the same as provided in 71-3-605 and verified as therein provided.

History: **En. Sec. 8, p. 129, L. 1899; re-en. Sec. 5826, Rev. C. 1907; re-en. Sec. 8325, R.C.M. 1921; re-en. Sec. 8325, R.C.M. 1935; R.C.M. 1947, 45-408.**

71-3-607. Immaterial defects in claim. No mistake or error in the statement of the demand or of the amount of credits and offsets allowed or of the balance asserted to be due to claimant or in the description of the property against which the claim is filed shall invalidate the lien unless the court finds that such mistake or error in the statement of the demand, credits and offsets, or of the balance due was made with intent to defraud or the court shall find that an innocent third party without notice, actual or constructive, has, since the claim was filed, become a bona fide owner of the property subject to the lien and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner.

History: **En. Sec. 13, p. 130, L. 1899; re-en. Sec. 5831, Rev. C. 1907; re-en. Sec. 8330, R.C.M. 1921; re-en. Sec. 8330, R.C.M. 1935; R.C.M. 1947, 45-413.**

71-3-608. Duties of county clerk. The county clerk must file any claim presented under the provisions of this part, endorse thereon the time of receiving the same, and keep the same in his office for the inspection of all persons and shall enter in a book, properly ruled and kept for such purpose, the names of all the parties, such names to be alphabetically arranged, the amount of the lien, and the time of filing the same.

History: En. Sec. 9, p. 129, L. 1899; re-en. Sec. 5827, Rev. C. 1907; re-en. Sec. 8326, R.C.M. 1921; re-en. Sec. 8326, R.C.M. 1935; R.C.M. 1947, 45-409.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-609 and 71-3-610 reserved.

71-3-611. Enforcement of lien. (1) The liens provided for in this part shall be enforced by a civil action in the district court of the county wherein the lien was filed and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property, so as to hold it for the satisfaction of any lien that may be against it.

(2) Any person who shall bring a civil action to enforce the lien provided for, any person having a lien as provided for, or who shall be made a party to any such civil action has the right to demand that such lien be enforced against the whole or any part of the sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining or which he has cut on his timberland during the 3 months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said sawlogs, piling, railroad ties, cordwood, or other timber or in manufacturing said lumber into shingles during the whole or any part of the 3 months mentioned in 71-3-603, or for timber cut during the whole or any part of the 3 months above mentioned.

(3) Where proceedings are commenced against any lot of sawlogs, piling, railroad ties, cordwood or other timber or lumber or shingles, as herein provided, and some of the lienors claim liens against these specific sawlogs, piling, railroad ties, cordwood, or other timber or lumber or shingles proceeded against and others against the same generally to secure their claim for work and labor, the priority of the liens shall be determined as hereinbefore provided.

History: (1)En. Sec. 11, p. 130, L. 1899; re-en. Sec. 5829, Rev. C. 1907; re-en. Sec. 8328, R.C.M. 1921; re-en. Sec. 8328, R.C.M. 1935; Sec. 45-411, R.C.M. 1947; (2), (3)En. Sec. 12, p. 130, L. 1899; re-en. Sec. 5830, Rev. C. 1907; re-en. Sec. 8329, R.C.M. 1921; re-en. Sec. 8329, R.C.M. 1935; Sec. 45-412, R.C.M. 1947; R.C.M. 1947, 45-411, 45-412; amd. Sec. 133, Ch. 370, L. 1987.

Cross-References

Rules of Civil Procedure incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

71-3-612. Requirements to be bona fide purchaser. It shall be conclusively presumed by the court that a party purchasing the property subject to the lien within the 30 days given herein to claimants wherein to file their liens is not an innocent third party nor that he has become a bona fide owner of the property subject to the lien unless it shall appear that he has paid full value for the property and has seen that the purchase money of the property has been applied to the payment of such bona fide claims as are entitled to liens upon the same property under the provisions of this part, according to the priorities herein established.

History: **En. Sec. 14, p. 131, L. 1899; re-en. Sec. 5832, Rev. C. 1907; re-en. Sec. 8331, R.C.M. 1921; re-en. Sec. 8331, R.C.M. 1935; R.C.M. 1947, 45-414.**

71-3-613. Parties. Any number of persons claiming liens under this part may join in the affidavit in 71-3-605 and may join in the same action and when separate actions are commenced, the court may consolidate them.

History: **En. Sec. 15, p. 131, L. 1899; re-en. Sec. 5833, Rev. C. 1907; re-en. Sec. 8332, R.C.M. 1921; re-en. Sec. 8332, R.C.M. 1935; R.C.M. 1947, 45-415(part).**

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

71-3-614. Judgment and execution. In each civil action, judgment must be rendered in favor of each person having a lien for the amount due to him, and the court shall order any property subject to the lien to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court shall apportion the proceeds of such sale to the payment of each judgment according to the priorities established in this part, pro rata in its class, according to the amount of such judgment.

History: **En. Sec. 16, p. 131, L. 1899; re-en. Sec. 5834, Rev. C. 1907; re-en. Sec. 8333, R.C.M. 1921; re-en. Sec. 8333, R.C.M. 1935; R.C.M. 1947, 45-416.**

Cross-References

Execution of judgment, Title 25, ch. 13.

71-3-615. Sale of property to satisfy lien. The court may order any property subject to a lien as provided in this part to be sold by the sheriff as personal property is sold on execution, either before or at the time judgment is rendered, as provided in 71-3-614, and the proceeds of such sale must be paid into court to be applied as directed in 71-3-614.

History: **En. Sec. 17, p. 132, L. 1899; re-en. Sec. 5835, Rev. C. 1907; re-en. Sec. 8334, R.C.M. 1921; re-en. Sec. 8334, R.C.M. 1935; R.C.M. 1947, 45-417.**

71-3-616. Penalty for destroying means of identification of property. Any person who shall eloign, injure, or destroy or who shall render difficult, uncertain, or impossible of identification any sawlogs, piling, railroad ties, cordwood, shingles, or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to a lienholder for the damages to the amount secured by his lien, and it being shown to the court in a civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the person, provided he be a party to such action, or the damages may be recovered by a civil action against such person.

History: **En. Sec. 18, p. 132, L. 1899; re-en. Sec. 5836, Rev. C. 1907; re-en. Sec. 8335, R.C.M. 1921; re-en. Sec. 8335, R.C.M. 1935; R.C.M. 1947, 45-418.**

Part 7

Crop Liens for Seed or Grain and Liens for Hail Insurance

71-3-701. Lien for seed or grain. Any person, company, association, or corporation who furnishes to another seed to be sown or planted or funds or means with which to purchase seed to be sown or planted or to be used in the production or cultivation of a crop or crops on the lands owned or contracted to be purchased, used, leased, occupied, or rented by him or held under government entry, upon filing the statement provided for in 71-3-703, has a lien not exceeding the purchase price of the seed or grain furnished upon the crop produced from the seed or grain furnished, or any part thereof, and upon the seed or grain threshed from the crop to secure the payment of the amount or the value of the seed or grain furnished or the funds or means advanced to purchase the seed or grain.

History: **En. Sec. 1, Ch. 23, L. 1915; amd. Sec. 1, Ch. 15, Ex. L. 1918; re-en. Sec. 8359, R.C.M. 1921; re-en. Sec. 8359, R.C.M. 1935; R.C.M. 1947, 45-701; amd. Sec. 1, Ch. 189, L. 1989.**

Cross-References

Liens on improvements and crops for amount due state — state lands, 77-2-336.

Liens on crops and improvements — state lands, 77-6-112.

71-3-702. Priority. The lien provided by 71-3-701 shall, as to the crop covered thereby, have priority over all other liens and encumbrances thereon.

History: **En. Sec. 3, Ch. 23, L. 1915; re-en. Sec. 3, Ch. 15, Ex. L. 1918; re-en. Sec. 8361, R.C.M. 1921; re-en. Sec. 8361, R.C.M. 1935; R.C.M. 1947, 45-703.**

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — threshers' liens, 71-3-804.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-703. How to obtain lien. Any person, company, association, or corporation who is entitled to a lien under 71-3-701 shall, within 90 days after the seed or grain is furnished or the funds, means, or money advanced for the seed or grain, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. Unless the person entitled to a lien files the lien statement within the time required, he is considered to have waived the right to a lien.

History: **En. Sec. 2, Ch. 23, L. 1915; amd. Sec. 2, Ch. 15, Ex. L. 1918; re-en. Sec. 8360, R.C.M. 1921; re-en. Sec. 8360, R.C.M. 1935; R.C.M. 1947, 45-702; amd. Sec. 1, Ch. 317, L. 1983; amd. Sec. 5, Ch. 295, L. 1987; amd. Sec. 4, Ch. 529, L. 1989.**

71-3-704. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid within 30 days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: **En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R.C.M. 1921; re-en. Sec. 8362, R.C.M. 1935; amd. Sec. 11-123, Ch. 264, L. 1963; R.C.M. 1947, 45-704; amd. Sec. 6, Ch. 295, L. 1987.**

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-705. Destruction of records — when allowed. (1) All seed liens filed for record in the office of any county clerk and recorder must be retained by the county clerk in a file kept for that purpose for a period of 8 years from the time when the seed lien has ceased to be a lien on the property described in the lien.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all seed liens that have been preserved for the period of time specified in this section, upon approval by the local government records destruction subcommittee provided for in 2-6-403.

History: (1)En. Sec. 1, Ch. 113, L. 1935; re-en. Sec. 4813.3, R.C.M. 1935; amd. Sec. 11-112, Ch. 264, L. 1963; Sec. 16-2922, R.C.M. 1947; (2)En. Sec. 2, Ch. 113, L. 1935; re-en. Sec. 4813.4, R.C.M. 1935; amd. Sec. 11-113, Ch. 264, L. 1963; Sec. 16-2923, R.C.M. 1947; R.C.M. 1947, 16-2922(part), 16-2923(part); amd. Sec. 22, Ch. 420, L. 1993.

71-3-706 through 71-3-710 reserved.

71-3-711. Lien for hail insurance. Any person, company, association, or corporation which shall furnish to another hail insurance for the purpose of protecting the party's crop from damage by hail during the hail season of the then-growing or seeded crop, whether the crop be on the land owned or contracted to be purchased, used, leased, occupied, or rented by the insured or held under government entry, shall, upon filing the statement provided for in 71-3-712, have a lien, subject to any seed lien that may then or thereafter be placed on record against the crop, for the amount due the person, company, association, or corporation furnishing the hail insurance from the insured so protected, whether it be on a note given, open account, or assessment, due or to become due, for the current year's protection, upon the crop produced on the land so protected or any part thereof and upon the seed or grain threshed from such crop to secure the payment of the amount due or the assessment levied against the insured for the insurance provided.

History: En. Sec. 1, Ch. 223, L. 1921; re-en. Sec. 8363, R.C.M. 1921; re-en. Sec. 8363, R.C.M. 1935; R.C.M. 1947, 45-705.

Cross-References

Foreclosure of crop lien of person receiving hail insurance, 80-2-231.

71-3-712. How lien obtained. Any person, company, association, or corporation who is entitled to a lien under 71-3-711 shall, within 30 days after the insurance is issued, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. A mutual company may file a lien for the largest amount that may become due under its assessment power, and in the event that the amount assessed is not as large as the amount of the lien claimed, the amount assessed and due is the amount the mutual insurance company is entitled to under this lien. Unless the person, company, association, or corporation entitled to a lien files the agricultural lien statement within the time required, he or it is considered to have waived the right to a lien.

History: En. Sec. 2, Ch. 223, L. 1921; re-en. Sec. 8364, R.C.M. 1921; re-en. Sec. 8364, R.C.M. 1935; R.C.M. 1947, 45-706; amd. Sec. 7, Ch. 295, L. 1987; amd. Sec. 5, Ch. 529, L. 1989.

71-3-713. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the current year, it is the duty of the lienor to acknowledge satisfaction thereof within 20 days after receiving payment and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before March 1 of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R.C.M. 1921; re-en. Sec. 8365, R.C.M. 1935; amd. Sec. 11-124, Ch. 264, L. 1963; R.C.M. 1947, 45-707; amd. Sec. 8, Ch. 295, L. 1987.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

Part 8
Threshers' Liens

71-3-801. Who may have lien — amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor performed by them on said grain and crops and which lien may be claimed by the owner of said grain for the reasonable value of such services if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested, or combined, provided notices are given and lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of Title 27, chapter 5.

History: En. Sec. 1, Ch. 25, L. 1915; re-en. Sec. 8366, R.C.M. 1921; amd. Sec. 1, Ch. 20, L. 1929; amd. Sec. 1, Ch. 112, L. 1931; amd. Sec. 1, Ch. 124, L. 1933; re-en. Sec. 8366, R.C.M. 1935; amd. Sec. 1, Ch. 308, L. 1973; R.C.M. 1947, 45-801; amd. Sec. 25, Ch. 684, L. 1985.

Cross-References

Liens on improvements and crops for amount due state — state lands, 77-2-336.

Liens on crops and improvements — state lands, 77-6-112.

71-3-802. How lien obtained. (1) A person entitled to a lien under 71-3-801 shall file with the office of the secretary of state a statement of agricultural lien, as provided in 71-3-125, within 30 days after the last service was rendered or labor performed in the threshing of grain or other crops or the cutting and harvesting and threshing by the combined harvester and thresher.

(2) If the grain or other crops cut, harvested, and threshed are being hauled from the machine or combine direct to the elevator or to any other purchaser, the threshermen, swather, or owner of the combine desiring to claim a lien shall also serve written notices upon the elevatorman or other private purchaser that he will claim and file a lien upon the grain or other crops for his services or labor performed in threshing or combining and threshing the grain or crops. A copy of the statement of agricultural lien mailed by certified mail is sufficient notice to the elevatorman or other private purchaser.

History: En. Sec. 2, Ch. 25, L. 1915; amd. Sec. 1, Ch. 162, L. 1917; amd. Sec. 1, Ch. 71, L. 1921; re-en. Sec. 8367, R.C.M. 1921; amd. Sec. 2, Ch. 20, L. 1929; amd. Sec. 2, Ch. 112, L. 1931; re-en. Sec. 8367, R.C.M. 1935; amd. Sec. 2, Ch. 308, L. 1973; R.C.M. 1947, 45-802; amd. Sec. 9, Ch. 295, L. 1987; amd. Sec. 6, Ch. 529, L. 1989; amd. Sec. 1, Ch. 427, L. 1991.

Cross-References

Grain — standards, storage, and merchandising, Title 80, ch. 4.

71-3-803. Repealed. Sec. 8, Ch. 529, L. 1989.

History: En. Sec. 3, Ch. 25, L. 1915; re-en. Sec. 8368, R.C.M. 1921; re-en. Sec. 8368, R.C.M. 1935; R.C.M. 1947, 45-803.

71-3-804. Priority. The lien for work or labor done or services rendered as specified in 71-3-801 shall be prior to and have precedence over any mortgage, encumbrance, or other lien upon said grain or other crops, except the lien for the seed furnished for the purpose of growing this particular crop.

History: En. Sec. 4, Ch. 25, L. 1915; re-en. Sec. 8369, R.C.M. 1921; re-en. Sec. 8369, R.C.M. 1935; R.C.M. 1947, 45-804.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Lien for seed or grain, 71-3-701.

Priority — liens for seed or grain, 71-3-702.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-805. Who considered owners. Every person, including guardians or minors, married persons, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are threshed or the services rendered or labor performed is deemed the owner thereof for the purposes herein mentioned.

History: En. Sec. 8, Ch. 25, L. 1915; re-en. Sec. 8373, R.C.M. 1921; re-en. Sec. 8373, R.C.M. 1935; amd. Sec. 26, Ch. 535, L. 1975; R.C.M. 1947, 45-808.

71-3-806. Parties. All persons interested in the matter in controversy or the property to be charged with the lien or having liens thereon may be made parties to an action for the foreclosure thereof.

History: En. Sec. 7, Ch. 25, L. 1915; re-en. Sec. 8372, R.C.M. 1921; re-en. Sec. 8372, R.C.M. 1935; R.C.M. 1947, 45-807.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

71-3-807. Limitations of actions. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 6 months from the filing of the lien.

History: En. Sec. 5, Ch. 25, L. 1915; re-en. Sec. 8370, R.C.M. 1921; amd. Sec. 1, Ch. 28, L. 1923; re-en. Sec. 8370, R.C.M. 1935; R.C.M. 1947, 45-805.

71-3-808. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid within 30 days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R.C.M. 1921; re-en. Sec. 8374, R.C.M. 1935; amd. Sec. 11-125, Ch. 264, L. 1963; R.C.M. 1947, 45-809; amd. Sec. 10, Ch. 295, L. 1987.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-809. Rules of practice. Except as otherwise provided, the provisions of Title 25 are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

History: En. Sec. 6, Ch. 25, L. 1915; re-en. Sec. 8371, R.C.M. 1921; re-en. Sec. 8371, R.C.M. 1935; R.C.M. 1947, 45-806.

71-3-810. Destruction of records — when allowed. (1) All threshers' liens filed for record in the office of any county clerk and recorder must be retained by the county clerk in a file kept for that purpose for a period of 8 years from the time when the threshers' lien has ceased to be a lien on the property described in the lien.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all threshers' liens which have been preserved for the period of time specified in this section, upon approval by the local government records destruction subcommittee provided for in 2-6-403.

History: (1)En. Sec. 1, Ch. 113, L. 1935; re-en. Sec. 4813.3, R.C.M. 1935; amd. Sec. 11-112, Ch. 264, L. 1963; Sec. 16-2922, R.C.M. 1947; (2)En. Sec. 2, Ch. 113, L. 1935; re-en. Sec. 4813.4, R.C.M. 1935; amd. Sec. 11-113, Ch. 264, L. 1963; Sec. 16-2923, R.C.M. 1947; R.C.M. 1947, 16-2922(part), 16-2923(part); amd. Sec. 23, Ch. 420, L. 1993.

Part 9

Crop or Grain Liens for Spraying or Dusting

71-3-901. Who may have lien — amount. A person, firm, corporation, or partnership that under contract, express or implied, performs labor or services or furnishes material in crop dusting or spraying grains or crops, whether by aerial or ground application, for the purpose of fertilization or weed, disease, or insect control for promoting the growth of the grains or crops has a lien upon all grains or crops dusted or sprayed for and on account of the labor or service performed and material furnished, upon complying with the provisions of this part. A lien may not exceed the prevailing price charged in the particular locality in which the grain or crops are sprayed or dusted.

History: En. Sec. 1, Ch. 205, L. 1953; R.C.M. 1947, 45-1401; amd. Sec. 1, Ch. 316, L. 1983; amd. Sec. 1, Ch. 125, L. 1993.

71-3-902. How lien obtained. (1) Any person, firm, corporation, or partnership that is entitled to a lien under this part shall, within 90 days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125.

(2) A person, firm, corporation, or partnership that is entitled to a lien and that intends to file a lien under this part shall give 30 days' notice, by certified mail, of intent to file to the person, firm, corporation, or partnership for which labor or service was performed or materials furnished.

History: En. Sec. 2, Ch. 205, L. 1953; amd. Sec. 1, Ch. 65, L. 1955; R.C.M. 1947, 45-1402; amd. Sec. 11, Ch. 295, L. 1987; amd. Sec. 7, Ch. 529, L. 1989; amd. Sec. 1, Ch. 56, L. 1995.

71-3-903. Repealed. Sec. 8, Ch. 529, L. 1989.

History: En. Sec. 3, Ch. 205, L. 1953; R.C.M. 1947, 45-1403.

71-3-904. Priority. The lien for labor or services performed or material furnished as specified in this part shall be prior to and have precedence over any mortgage, encumbrance, or other lien upon said grain or crops, except the lien for seed, hail insurance, threshing, labor, and warehouse services furnished for the purpose of growing or handling the particular grain or crops.

History: En. Sec. 4, Ch. 205, L. 1953; R.C.M. 1947, 45-1404.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Liens for salaries and wages, 71-3-301.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Lien for seed or grain, 71-3-701.

Priority — liens for seed or grain, 71-3-702.

Threshers' liens, 71-3-801.

Priority — threshers' liens, 71-3-804.

Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-905. Who considered owners. Every person, including guardians or minors, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are dusted or sprayed or the services or labor performed or material furnished is deemed the owner thereof for the purposes herein mentioned.

History: En. Sec. 9, Ch. 205, L. 1953; R.C.M. 1947, 45-1409.

71-3-906. Parties. All persons interested in the matter in controversy or the property to be charged with the lien or having liens thereon shall be made parties to an action for the foreclosure thereof.

History: En. Sec. 8, Ch. 205, L. 1953; R.C.M. 1947, 45-1408.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

71-3-907. Limitations of actions. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 1 year from the day of the filing of the lien.

History: En. Sec. 5, Ch. 205, L. 1953; R.C.M. 1947, 45-1405.

71-3-908. Acknowledgment of satisfaction and discharge of lien — penalty. (1) Whenever the indebtedness which is a lien upon any grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge said lien within 30 days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963; R.C.M. 1947, 45-1410; amd. Sec. 12, Ch. 295, L. 1987.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-909. Rules of practice. (1) Except as otherwise provided, the provisions of Title 25 are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 6, Ch. 205, L. 1953; Sec. 45-1406, R.C.M. 1947; (2)En. Sec. 7, Ch. 205, L. 1953; Sec. 45-1407, R.C.M. 1947; R.C.M. 1947, 45-1406, 45-1407.

Cross-References

Civil Procedure, Title 25.

Part 10

Labor and Material Liens on Oil and Gas Wells and Pipelines

71-3-1001. Definitions. As used in this part, the following definitions apply:

(1) "Furnish" means sell or rent.

(2) "Material" means material, fuel, machinery, equipment, appliances, buildings, structures, tools, bits, or supplies but does not include drilling rigs or hoists or their integral component parts except wire lines.

(3) "Owner" includes a person holding any interest in the legal or equitable title, or both, and purchasers under executory contract.

History: (1), (2)En. 45-1012 by Sec. 12, Ch. 143, L. 1957; Sec. 45-1012, R.C.M. 1947; (3)En. 45-1011 by Sec. 11, Ch. 143, L. 1957; Sec. 45-1011, R.C.M. 1947; R.C.M. 1947, 45-1011(part), 45-1012.

71-3-1002. Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines. (1) Any person, corporation, or partnership which shall under contract, expressed or implied, with the owner of any leasehold for oil and gas purposes or the owner of any gas pipe or oil pipeline or with the trustee or agent of such owner, perform labor or furnish material or services used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well or oil or gas pipeline or who shall furnish any material or services or perform any labor in constructing or putting together any of the machinery used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well or oil or gas pipeline, whether or not such material is incorporated therein or becomes a part thereof, shall have a lien for the amount due therefor, including transportation and mileage charges connected therewith and interest from the date the same was due, upon the whole of such leasehold or oil or gas pipeline, the appurtenances thereon, and upon all material owned by the owner of such leasehold or oil or gas pipeline and used in the digging, drilling, torpedoing, completing, operating, or repairing of any such oil or gas well or oil or gas pipeline and upon all oil or gas wells located on such leasehold and upon all oil or gas produced from such leasehold and the proceeds thereof inuring to the working interest therein as such working interest existed on the date the labor was first performed or materials or services were first furnished.

(2) However, in the event labor is performed for, or materials or services are furnished to, the owner of the working interest in only a portion of the acreage covered by a lease, the lien granted herein shall be restricted to such portion of the acreage.

(3) The lien herein granted shall not extend to any royalty interests, overriding royalty interests, or oil payments created prior to the date the first item of material or services are furnished or the date the first labor is performed.

History: En. Sec. 1, Ch. 45, L. 1917; re-en. Sec. 8375, R.C.M. 1921; amd. Sec. 1, Ch. 152, L. 1923; re-en. Sec. 8375, R.C.M. 1935; amd. Sec. 1, Ch. 143, L. 1957; R.C.M. 1947, 45-1001.

71-3-1003. Lien for labor or supplies furnished for contractor. Any person, partnership, or corporation that furnishes materials or services as a subcontractor or to a contractor or a subcontractor or any person who performs labor under a subcontractor with a contractor or who, as an artisan or day laborer in the employ of such contractor or subcontractor, performs any such labor has a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section attaches to all materials and fixtures owned by such original contractor or subcontractor for whom the labor is performed or materials or services furnished and used or employed or furnished to be used or employed in the drilling or operating of such oil and gas wells or in the construction of such pipeline.

History: En. Sec. 2, Ch. 45, L. 1917; re-en. Sec. 8376, R.C.M. 1921; re-en. Sec. 8376, R.C.M. 1935; amd. Sec. 2, Ch. 143, L. 1957; R.C.M. 1947, 45-1002; amd. Sec. 4, Ch. 11, L. 1979.

71-3-1004. How lien perfected. Every person, corporation, or partnership claiming a lien under this part shall file with the county clerk of the county in which such land, leasehold, or pipeline or some part thereof is situated a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold or pipeline, and if the claimant be a claimant under 71-3-1003, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. Such statement must be filed within 6 months after the date upon which said material or services were last furnished or labor last performed under contract.

History: **En. 45-1004.1 by Sec. 2, Ch. 170, L. 1973; R.C.M. 1947, 45-1004.1.**

71-3-1005. Enforcement of liens — duty of county clerks. The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws for materialmen's and construction liens.

History: **En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R.C.M. 1921; amd. Sec. 2, Ch. 152, L. 1923; re-en. Sec. 8377, R.C.M. 1935; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963; amd. Sec. 1, Ch. 170, L. 1973; R.C.M. 1947, 45-1003.**

Cross-References

Attorney fees to be recovered on foreclosure of liens, 71-3-124.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

Construction liens — filing with County Clerk — notification of owner, 71-3-534.

71-3-1006. Date lien arises. The lien provided for in this part arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: **En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973; R.C.M. 1947, 45-1004.2(part).**

71-3-1007. Priority. (1) Upon compliance with the provisions of 71-3-1004, such lien shall be preferred to all other titles, charges, liens, or encumbrances which may attach to or upon any of the property upon which a lien is given by this part subsequent to the date the lien herein provided for arises.

(2) All liens affixed by virtue of this part upon the same property shall be of equal standing.

(3) The lien herein provided for shall have no priority over other liens, encumbrances, or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: **(1), (2)En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973; Sec. 45-1004.2, R.C.M. 1947; (3)En. 45-1004.3 by Sec. 4, Ch. 170, L. 1973; Sec. 45-1004.3, R.C.M. 1947; R.C.M. 1947, 45-1004.2(part), 45-1004.3.**

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-1008. Lien for running account as single contract. All labor performed or materials or services furnished by any person entitled to a lien under this part upon the same leasehold for oil and gas purposes or the same pipeline shall for the purposes of this part be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided that no more than 6 months shall have elapsed between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

History: **En. 45-1007 by Sec. 7, Ch. 143, L. 1957; R.C.M. 1947, 45-1007.**

71-3-1009. Liability fixed. Nothing in this part shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated by such owner to be paid for such materials or services furnished or labor performed. However, the risk of all payments made to the original contractor shall be upon such owner if such payments be made after written notice from a person other than an original contractor is received by such owner at his residence or principal place of business, which notice shall set forth the name and address of the claimant and the amount and nature of his claim. Payment by the owner to the original contractor of all or any part of the contract price, prior to the receipt of such notice, shall operate to discharge and satisfy all liens attaching to the property of such owner by virtue of this part to the extent of such payment. The owner shall not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract.

History: **En. 45-1008 by Sec. 8, Ch. 143, L. 1957; R.C.M. 1947, 45-1008.**

71-3-1010. Removal of property covered by lien prohibited — effect of wrongful removal. (1) When any lien provided for by this part shall have attached to the property covered thereby, it shall be unlawful for any person to remove such property or any part thereof or cause the same to be removed from the land or premises where located at the time such lien attached or otherwise dispose of the same without the written consent of the holder of such lien.

(2) In the event such property or some part thereof is about to be removed or disposed of in violation of this section, the district court for the county where such property or any part thereof is located may, upon the verified application of the holder of such lien, enjoin all persons alleged in such application to be about to remove or dispose of such property or some part thereof from removing or disposing of the same.

(3) In the event such property or any part thereof shall have been removed or disposed of in violation of this section, the holder of such lien shall be entitled in any action to foreclose the same to the appointment of a receiver to take possession of such removed or disposed of property wherever the same may be located within this state.

(4) This section shall not preclude the appointment of a receiver in actions brought to foreclose liens given by this part upon any equitable grounds warranting such appointment.

History: **En. 45-1009 by Sec. 9, Ch. 143, L. 1957; R.C.M. 1947, 45-1009.**

71-3-1011. Notice to purchaser of oil and gas. Anything in this part to the contrary notwithstanding, any lien claimed by virtue of this part insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas shall not be effective against any purchaser of such oil or gas until written notice of such claim has been delivered to such purchaser at his residence or principal place of business. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. Such notice shall be delivered personally to the purchaser or by registered or certified letter deposited in the United States mail. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas produced from the interest upon which the lien is claimed or the proceeds thereof, except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid.

History: En. 45-1010 by Sec. 10, Ch. 143, L. 1957; R.C.M. 1947, 45-1010.

71-3-1012. Effect on interest which is less than fee interest. If a lien provided for in this part attaches to an estate less than the fee, forfeiture of such estate shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this part attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien attached prior to such failure.

History: En. 45-1011 by Sec. 11, Ch. 143, L. 1957; R.C.M. 1947, 45-1011(part).

Part 11

Liens of Physicians, Nurses, Physical Therapists, Occupational Therapists, Chiropractors, Dentists, and Hospitals in Personal Injury Claims

Part Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1101 through 71-3-1105. Repealed. Sec. 9, Ch. 532, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

71-3-1101 through 71-3-1105. En. Sec. 1 through 5, Ch. 57, L. 1931; re-en. Sec. 8395.1 through 8395.5, R.C.M. 1935; R.C.M. 1947, 45-1201 through 45-1205.

71-3-1106 through 71-3-1110 reserved.

71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, and Hospital Lien Act".

History: En. Sec. 1, Ch. 532, L. 1979; amd. Sec. 1, Ch. 85, L. 1987; amd. Sec. 1, Ch. 384, L. 1993.

71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance.

History: En. Sec. 2, Ch. 532, L. 1979; amd. Sec. 2, Ch. 496, L. 1983; amd. Sec. 2, Ch. 85, L. 1987; amd. Sec. 2, Ch. 384, L. 1993; amd. Sec. 3, Ch. 454, L. 1993.

71-3-1113. Definitions. As used in this part, the following definitions apply:

(1) "Beneficiary" means a person entitled to insurance benefits.

(2) "Insurance" means a contract whereby a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies. The term "insurer" includes a health service corporation.

(3) "Person" means an individual, a corporation, an organization, or other legal entity.

History: En. Sec. 3, Ch. 532, L. 1979; amd. Sec. 1, Ch. 469, L. 1991.

71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals and liens of psychologists, licensed social workers, and licensed professional counselors. (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, hospital, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420.

History: En. Sec. 4, Ch. 532, L. 1979; amd. Sec. 3, Ch. 85, L. 1987; amd. Sec. 3, Ch. 384, L. 1993; amd. Sec. 3, Ch. 454, L. 1993.

71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

History: En. Sec. 5, Ch. 532, L. 1979; amd. Sec. 4, Ch. 85, L. 1987; amd. Sec. 4, Ch. 384, L. 1993.

71-3-1116. Notice of lien — filing with clerk of court. If an action is commenced for recovery for injury, disease, or death, a copy of the notice of lien may be filed in the office of the clerk of court in which the action is pending, and the filing is notice to all parties to the action.

History: En. Sec. 6, Ch. 532, L. 1979.

71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor, or hospital for the reasonable value of the services.

History: En. Sec. 7, Ch. 532, L. 1979; amd. Sec. 5, Ch. 85, L. 1987; amd. Sec. 5, Ch. 384, L. 1993.

71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance; a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, psychologist, licensed social worker, licensed professional counselor,

or hospital; or an annuity contract or to pension benefits payable under a qualified pension plan.

History: En. Sec. 8, Ch. 532, L. 1979; amd. Sec. 1, Ch. 496, L. 1983; amd. Sec. 6, Ch. 85, L. 1987; amd. Sec. 2, Ch. 469, L. 1991; amd. Sec. 6, Ch. 384, L. 1993.

Cross-References

Workers' Compensation Act, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Part 12

Agisters' Liens and Liens for Service

Part Cross-References

Bailment — deposit, Title 70, ch. 6.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1201. Who may have lien. (1) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a ranchman, farmer, agister, herder, hotelkeeper, livery, or stablekeeper to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock and may retain possession thereof until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safekeeping, or carriage thereof has a special lien thereon, dependent on possession, for the compensation, if any, that is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith.

History: En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R.C.M. 1921; Cal. Civ. C. Sec. 3051; Based on Field Civ. C. Sec. 1696; re-en. Sec. 8383, R.C.M. 1935; amd. Sec. 11-127, Ch. 264, L. 1963; R.C.M. 1947, 45-1106(part); amd. Sec. 5, Ch. 11, L. 1979.

Cross-References

Bailment — deposit, Title 70, ch. 6.

71-3-1202. Priority. (1) The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the property involved unless, within 30 days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lienholder, stating his intention to assert a lien on said property, under the terms of this part, and stating the nature and approximate amount of the work performed or feed or other services furnished or intended to be performed or furnished therefor.

(2) Such service may be made either by personal service or by mailing by registered or certified mail a copy of said notice to the secured party or other lienholder at his last-known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office.

(3) Within 20 days after the date of such mailing or 10 days after such personal service, the secured party or other lienholder or his representative shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or

other lienholder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this part.

History: **(1), (2)En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R.C.M. 1921; Cal. Civ. C. Sec. 3051; Based on Field Civ. C. Sec. 1696; re-en. Sec. 8383, R.C.M. 1935; amd. Sec. 11-127, Ch. 264, L. 1963; Sec. 45-1106, R.C.M. 1947; (3)En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R.C.M. 1921; Cal. Civ. C. Sec. 3052; re-en. Sec. 8384, R.C.M. 1935; amd. Sec. 11-128, Ch. 264, L. 1963; Sec. 45-1107, R.C.M. 1947; R.C.M. 1947, 45-1106(part), 45-1107; amd. Sec. 1, Ch. 308, L. 1983.**

Cross-References

Secured transactions — U.C.C., Title 30, ch. 9.

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

Priority — labor and material liens on oil and gas wells and pipelines, 71-3-1007.

71-3-1203. Enforcement of lien — sale. If payment for such work, labor, feed, or services or material furnished is not made within 30 days after the performance or furnishing of the same, the person entitled to a lien under the provisions of this part may enforce said lien in the following manner:

(1) He shall deliver to the sheriff or a constable of the county in which the property is located an affidavit of the amount of his claim against said property, a description of the property, and the name of the owner thereof or of the person at whose request the work, labor, or services were performed or the materials furnished.

(2) Upon receipt of such affidavit, the sheriff or constable shall proceed to advertise and sell at public auction so much of the property covered by said lien as will satisfy same.

(3) Such sale shall be advertised, conducted, and held in the same manner as prescribed in 25-13-701(1)(b).

(4) Before the sheriff or constable sells the property at public auction, he shall give notice of the sale to the owner or person at whose request the work, labor, or services were performed or the materials furnished.

(a) Notice to the owner must be given at least 10 days before the sale.

(b) The notice must state:

(i) the time and place of the sale;

(ii) the amount of the claim against the property;

(iii) a description of the property;

(iv) the name of the owner or person who contracted for the services or materials; and

(v) the name of the person claiming the lien.

(c) The notice may be given by personal service or by mailing by certified mail a copy of the notice to the last-known post office address of the owner or person who contracted for the services or materials.

(d) If the sheriff or constable is not able to effect personal service or service by mail because the location and mailing address of the owner or person who contracted for the services or materials are unknown, the sheriff or constable may give notice by posting notice of the sale in three public places in the county in which the property is located.

(5) The proceeds of the sale shall be applied by the sheriff to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or such part as is required to discharge the claims, shall be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against said property, and the balance of the proceeds shall be turned over to the owner of the property.

(6) However, before making seizure of any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor that may not exceed double the amount of the claim against said property, said bond and the surety or sureties thereon to be approved by said sheriff.

History: En. Sec. 3, Ch. 117, L. 1921; re-en. Sec. 8385, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1927; re-en. Sec. 8385, R.C.M. 1935; R.C.M. 1947, 45-1108; amd. Sec. 1, Ch. 87, L. 1987; amd. Sec. 10, Ch. 88, L. 1987.

71-3-1204. Lien not lost by fraudulent taking of property. The lien created by this part shall not be lost by reason of any forcible or fraudulent taking of the property from the possession of the person entitled to said lien, but in all such cases the person entitled to such lien shall be entitled to recover possession of the property by proper action instituted in court against any person in whose possession the property may be found.

History: En. Sec. 4, Ch. 117, L. 1921; re-en. Sec. 8386, R.C.M. 1921; re-en. Sec. 8386, R.C.M. 1935; R.C.M. 1947, 45-1109.

Part 13
Liens on Real Estate

Part Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1301. Lien of seller of real property — waiver. (1) One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

(2) Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract; but a transfer of such contract in trust to pay debts and return the surplus is not a waiver of the lien.

History: (1)En. Sec. 3930, Civ. C. 1895; re-en. Sec. 5800, Rev. C. 1907; re-en. Sec. 8378, R.C.M. 1921; Cal. Civ. C. Sec. 3046; Field Civ. C. Sec. 1691; re-en. Sec. 8378, R.C.M. 1935; Sec. 45-1101, R.C.M. 1947; (2)En. Sec. 3931, Civ. C. 1895; re-en. Sec. 5801, Rev. C. 1907; re-en. Sec. 8379, R.C.M. 1921; Cal. Civ. C. Sec. 3047; Based on Field Civ. C. Sec. 1692; re-en. Sec. 8379, R.C.M. 1935; Sec. 45-1102, R.C.M. 1947; R.C.M. 1947, 45-1101, 45-1102.

71-3-1302. Purchaser's lien on real property. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

History: En. Sec. 3934, Civ. C. 1895; re-en. Sec. 5804, Rev. C. 1907; re-en. Sec. 8382, R.C.M. 1921; Cal. Civ. C. Sec. 3050; Field Civ. C. Sec. 1695; re-en. Sec. 8382, R.C.M. 1935; R.C.M. 1947, 45-1105.

71-3-1303. Extent of liens. The liens defined in 71-3-1301 and 71-3-1302 are valid against everyone claiming under the debtor, except a purchaser and encumbrancer in good faith and for value.

History: En. Sec. 3932, Civ. C. 1895; re-en. Sec. 5802, Rev. C. 1907; re-en. Sec. 8380, R.C.M. 1921; Cal. Civ. C. Sec. 3048; Field Civ. C. Sec. 1693; re-en. Sec. 8380, R.C.M. 1935; R.C.M. 1947, 45-1103.

Part 14
Hotel Liens

Part Cross-References

Bailment — innkeepers, Title 70, ch. 6, part 5.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1401. Lien of hotelkeepers. Hotelmen and boardinghouse and lodginghouse keepers shall have a lien upon the baggage and other property of value brought into such hotel, inn, boardinghouse, or lodginghouse by such guest or boarder or lodger for his accommodation, board, or lodging and room rent and such extras as are furnished at his request, with the right of the possession of such baggage or other property of value until all such charges are paid. Nothing herein contained shall be construed to give a lien upon property sold on the installment plan, title to which is to remain in the vendor until final payment.

History: En. Sec. 2502, Civ. C. 1895; amd. Sec. 1, p. 132, L. 1899; re-en. Sec. 5166, Rev. C. 1907; re-en. Sec. 7675, R.C.M. 1921; Cal. Civ. C. Sec. 1861; re-en. Sec. 7675, R.C.M. 1935; R.C.M. 1947, 34-103.

Cross-References

Agisters' liens and liens for service, 71-3-1201 through 71-3-1204.

71-3-1402. Enforcement of lien. Any hotelkeeper or innkeeper who shall have a lien upon any of the goods, baggage, or other chattel property of his guests may, at the expiration of 6 months from the date of the departure of such guest from such hotel or inn, sell and dispose of the same at public auction and to the highest bidder for cash or so much thereof as may be necessary to pay the sum due such hotelkeeper or innkeeper, together with the cost of storage, advertisement, and sale.

History: En. Sec. 2512, Civ. C. 1895; re-en. Sec. 5175, Rev. C. 1907; re-en. Sec. 7682, R.C.M. 1921; re-en. Sec. 7682, R.C.M. 1935; R.C.M. 1947, 34-110.

71-3-1403. Notice of sale. Before proceeding to the sale of the property of any guest, as provided in 71-3-1402, such hotelkeeper or innkeeper shall cause a notice of such sale, containing a description of the property to be sold and the time and place where such property will be sold, to be published once each week for 2 successive weeks in a newspaper published in the city or town in which such hotel or inn is situated but, if there be none, then in some newspaper published nearest such town or city and in case any balance arising from such sale shall not be claimed by the rightful owner within 30 days from the day of such sale, the same shall be paid into the treasury of the county in which such sale took place. If such balance be not claimed by the owner thereof or his legal representatives within 1 year thereafter, the same shall be paid into the school fund of such county.

History: **En. Sec. 2513, Civ. C. 1895; re-en. Sec. 5176, Rev. C. 1907; re-en. Sec. 7683, R.C.M. 1921; re-en. Sec. 7683, R.C.M. 1935; R.C.M. 1947, 34-111.**

Part 15

Miscellaneous Liens

Part Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1501. Lien of factor. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are entrusted to him by the same principal.

History: **En. Sec. 3936, Civ. C. 1895; re-en. Sec. 5806, Rev. C. 1907; re-en. Sec. 8387, R.C.M. 1921; Cal. Civ. C. Sec. 3053; Field Civ. C. Sec. 1697; re-en. Sec. 8387, R.C.M. 1935; R.C.M. 1947, 45-1110.**

Cross-References

Policy and scope of ch. 9 of U.C.C., 30-9-102.

71-3-1502. Banker's lien. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

History: **En. Sec. 3937, Civ. C. 1895; re-en. Sec. 5807, Rev. C. 1907; re-en. Sec. 8388, R.C.M. 1921; Cal. Civ. C. Sec. 3054; Field Civ. C. Sec. 1698; re-en. Sec. 8388, R.C.M. 1935; R.C.M. 1947, 45-1111.**

71-3-1503. Officer's lien. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied or a judicial sale of the property is had.

History: **En. Sec. 3940, Civ. C. 1895; re-en. Sec. 5810, Rev. C. 1907; re-en. Sec. 8391, R.C.M. 1921; Cal. Civ. C. Sec. 3057; Field Civ. C. Sec. 1701; re-en. Sec. 8391, R.C.M. 1935; R.C.M. 1947, 45-1114.**

71-3-1504. Judgment lien. The lien of a judgment is regulated by Title 25.

History: **En. Sec. 3941, Civ. C. 1895; re-en. Sec. 5811, Rev. C. 1907; re-en. Sec. 8392, R.C.M. 1921; Cal. Civ. C. Sec. 3058; Field Civ. C. Sec. 1703; re-en. Sec. 8392, R.C.M. 1935; R.C.M. 1947, 45-1115.**

Cross-References

Judgment liens — expiration, 25-9-301.

71-3-1505. Lien for rental on frozen food compartments. A person who operates a frozen food plant which offers individual compartments to the public has a lien on the property in his possession for rentals or other charges due. Liens may be foreclosed in the same way provided for chattel mortgages.

History: **En. Sec. 13, Ch. 17, L. 1967; R.C.M. 1947, 27-623.**

TITLE 72

ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS

Ch.
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2. UPC — Intestacy, Wills, and Donative Transfers.
3. UPC — Probate and Administration.
4. UPC — Foreign Personal Representatives and Ancillary Administration.
5. UPC — Persons Under Disability — Guardianship and Conservatorship.
6. Nonprobate Transfers on Death.
Chapters 7 and 8 reserved.
9. Disposition of Community Property Rights at Death.
10. Supplementary General Provisions on Probate and Succession. Repealed. Sec. 134, Ch. 494, L. 1993.
11. Intestate Succession and Wills — Supplementary Provisions.
12. Probate and Administration — Supplementary Provisions.
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14. Escheated Estates.
15. Public Administrator.
16. Inheritance and Estate Taxes.
17. Anatomical Gift Act.
Chapters 18 and 19 reserved.
20. Trusts in General. Repealed. Sec. 220, Ch. 685, L. 1989.
21. Trustees' Powers Act. Repealed. Sec. 220, Ch. 685, L. 1989.
22. Conveyance of Trust Property by Court Order. Repealed. Sec. 220, Ch. 685, L. 1989.
23. Trusts for Benefit of Third Persons. Repealed. Sec. 220, Ch. 685, L. 1989.
24. Trusts in Relation to Real Property. Repealed. Sec. 220, Ch. 685, L. 1989.
25. Revised Uniform Principal and Income Act. Repealed. Sec. 220, Ch. 685, L. 1989.
26. Uniform Transfers to Minors Act.
27. Miscellaneous Provisions Relating to Trusts. Repealed and Renumbered. Sec. 220, Ch. 685, L. 1989.
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CHAPTER 1

UNIFORM PROBATE CODE GENERAL PROVISIONS

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Chapter Cross-References

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Uniform statutory rule against perpetuities, Title 72, ch. 2, part 10.

Part 1

Short Title, Definitions, Construction, and General Provisions

72-1-101. Short title. Chapters 1 through 5 and chapter 16, part 6, shall be known and may be cited as the "Uniform Probate Code".

History: En. 91A-1-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-101.

72-1-102. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-1-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-102.

72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 5, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate or inheritance taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes

a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant as defined in subsection (10).

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(44) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(45) "Special administrator" means a personal representative as described by chapter 3, part 7.

(46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased

an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 of this title; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" means an individual described in 72-5-101.

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

History: En. 91A-1-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-201; amd. Sec. 3, Ch. 494, L. 1993; amd. Sec. 2, Ch. 592, L. 1995.

72-1-104. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

History: En. 91A-1-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-103.

Cross-References

Community property — disposition upon death, 72-9-107.

72-1-105. Construction against implied repeal. This code is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

History: En. 91A-1-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-105.

72-1-106. Uniform Probate Code to take precedence. Should any provision of this code conflict with any provisions of other statutes of the state of Montana relating to probate, guardianship, or other subjects incorporated in this code and such other statute or statutes was or were adopted prior to the enactment of this code, the provisions of this code shall be deemed to be controlling.

History: En. 91A-6-104 by Sec. 19, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-104.

72-1-107. Effective date — applicability. (1) This code takes effect on July 1, 1975.

(2) Except as provided elsewhere in this code, on July 1, 1975:

(a) the code applies to any wills of decedents dying thereafter;

(b) the code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent, except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(c) every personal representative, including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(d) an act done before July 1, 1975, in any proceeding and any accrued right are not impaired by this code. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1975, the provisions shall remain in force with respect to that right.

(e) any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before July 1, 1975, unless there is a clear indication of a contrary intent.

History: En. 91A-6-102 by Sec. 3, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-102.

72-1-108. Evidence of death or status. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death or status apply:

(1) Death occurs when an individual is determined to be dead under 50-22-101.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under subsection (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under subsections (2) through (4), who is absent for a continuous period of 5 years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in subsection (2) or (3), a document described in subsection (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

History: **En. 91A-1-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-107; amd. Sec. 2, Ch. 582, L. 1989; amd. Sec. 4, Ch. 494, L. 1993.**

Cross-References

Disputable presumptions, 26-1-602.

Montana Rules of Evidence, Title 26, ch. 10.

72-1-109. Acts by holder of general power. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond, or to perform other duties, the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

History: **En. 91A-1-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-108.**

72-1-110. Repealed. Sec. 134, Ch. 494, L. 1993.

History: **En. 91A-6-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-6-101.**

72-1-111. Remedies for fraud — statute of limitations. (1) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief including restitution against the perpetrator of the fraud or any person benefiting from the fraud, whether innocent or not (other than a bona fide purchaser for value and without notice).

(2) Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud.

(3) This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

History: **En. 91A-1-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-106.**

Cross-References

Kinds of fraud, 28-2-404 through 28-2-406.

Part 2

Scope, Jurisdiction, and Courts

72-1-201. Territorial application. Except as otherwise provided in this code, this code applies to:

(1) the affairs and estates of decedents, missing persons, and persons to be protected in this state;

(2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state; and

(3) incapacitated persons and minors in this state.

History: **En. 91A-1-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-301.**

72-1-202. Subject matter jurisdiction. (1) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to:

(a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and

(b) protection of minors and incapacitated persons.

(2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

History: En. 91A-1-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-302.

72-1-203. Venue — multiple proceedings — transfer. (1) Where venue for a proceeding under this code may lie in more than one county in the state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(3) If a court finds that, as a matter of law or in the interest of justice, a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

History: En. 91A-1-303 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-303.

Cross-References

Trial venue, Title 25, ch. 2.

72-1-204. Records and certified copies. (1) The clerk of court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the clerk or court and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information.

(2) Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded.

(3) Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

History: En. 91A-1-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-305.

Cross-References

Probate records, 3-5-513.

72-1-205. Powers of clerk — performable by clerk or court. The acts and orders which this code specifies as performable by the clerk of court may be performed either by a judge of the court or by the clerk of court.

History: En. 91A-1-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-307.

72-1-206. Oath or affirmation on filed documents. Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code, including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed; deliberate falsification therein shall constitute the offense of false swearing.

History: En. 91A-1-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-309.

Cross-References
False swearing, 45-7-202.

72-1-207. Rules of civil procedure to apply. Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this code.

History: En. 91A-1-304 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-304.

Cross-References
Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

72-1-208. Jury trial. (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, a formal proceeding for determination of heirship, and any other proceeding as may be provided for by law.

(2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

History: En. 91A-1-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-306.

Cross-References
Trial by jury, Art. II, sec. 26, Mont. Const.

72-1-209. Appeals. Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and power of the appellate court, is governed by the statutes and rules applicable to the appeals to the supreme court.

History: En. 91A-1-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-308.

Cross-References
Montana Rules of Appellate Procedure, Title 25, ch. 21.

Part 3

Notices, Parties, and Representation Generally

72-1-301. Notice — method and time of giving. (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered, or ordinary first-class mail addressed to the person being notified at the post-office address given in his demand for notice, if any, or at his office or place of residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper published more often than once a week, by publishing on at least 3 different days of publication, and it shall be so published that there must be at least 10 days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

History: En. 91A-1-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 516, L. 1975; R.C.M. 1947, 91A-1-401.

72-1-302. Waiver of notice. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

History: En. 91A-1-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-402.

72-1-303. Pleadings — when orders or notice binding one binds another — representation. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements, the following apply:

(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(b) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by 72-1-301 shall be given to every interested person or to one who can bind an interested person as described in (2)(a) or (2)(b) above. Notice may be given both to a person and to another who may bind him.

(b) Notice is given to unborn or unascertained persons, who are not represented under (2)(a) or (2)(b) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

History: En. 91A-1-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-1-403.

CHAPTER 2

UPC — INTESTACY, WILLS, AND DONATIVE TRANSFERS

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Chapter Cross-References

Montana Rights of the Terminally Ill Act — discontinuance of life-sustaining supports, Title 50, ch. 9.

Uniform Anatomical Gift Act, Title 72, ch. 17.

Part 1
Intestate Succession

Part Cross-References

Treason and descent of estates, Art. II, sec. 30, Mont. Const.

72-2-101 through 72-2-105. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-101.	Renumbered 72-2-811.
72-2-102.	Renumbered 72-2-224.
72-2-103.	Renumbered 72-2-812.
72-2-104.	Renumbered 72-2-813.
72-2-105.	Renumbered 72-2-534.

72-2-106 through 72-2-110 reserved.

72-2-111. Intestate estate. (1) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in chapters 1 through 5, except as modified by the decedent's will.

(2) A decedent may by will expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed an intestate share.

History: En. 91A-2-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-101; amd. Sec. 10, Ch. 494, L. 1993; Sec. 72-2-201, MCA 1991; redes. 72-2-111 by Code Commissioner, 1993.

72-2-112. Share of spouse. The intestate share of a decedent's surviving spouse is:

(1) the entire intestate estate if:

(a) no descendant or parent of the decedent survives the decedent; or

(b) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first $200,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;

(3) the first $150,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first $100,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

History: En. 91A-2-102 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 363, L. 1975; R.C.M. 1947, 91A-2-102; amd. Sec. 4, Ch. 582, L. 1989; amd. Sec. 11, Ch. 494, L. 1993; Sec. 72-2-202, MCA 1991; redes. 72-2-112 by Code Commissioner, 1993.

Cross-References
Elective share, 72-2-221.

72-2-113. Share of heirs other than surviving spouse. (1) Any part of the intestate estate not passing to the decedent's surviving spouse under 72-2-112, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

(a) to the decedent's descendants by representation;

(b) if there is no surviving descendant, to the decedent's parents equally if both survive or to the surviving parent;

(c) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(d) if there is no surviving descendant, parent, or descendant of a parent and the decedent is:

(i) survived by one or more grandparents or descendants of grandparents:

(A) one-half to:

(I) the decedent's paternal grandparents equally if both survive;

(II) the surviving paternal grandparent; or

(III) the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(B) the other one-half to the decedent's maternal relatives in the same manner; or

(ii) not survived by a grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate to the decedent's relatives on the other side in the same manner as the half;

(e) if there is no surviving descendant, grandparent, or descendant of a grandparent, to the person of the closest degree of kinship with the decedent. Except as provided in subsection (2), if more than one person is of that closest degree, those persons share equally.

(2) If more than one person is of the closest degree as provided in subsection (1)(e) but they claim through different ancestors, those who claim through the nearer ancestor must receive to the exclusion of those claiming through a more remote ancestor.

History: En. 91A-2-103 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 363, L. 1975; R.C.M. 1947, 91A-2-103; amd. Sec. 2, Ch. 52, L. 1981; amd. Sec. 12, Ch. 494, L. 1993; Sec. 72-2-203, MCA 1991; redes. 72-2-113 by Code Commissioner, 1993; amd. Sec. 66, Ch. 18, L. 1995.

72-2-114. Requirement that heir survive decedent for one hundred twenty hours. An individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under 72-2-115.

History: **En. 91A-2-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-104; amd. Sec. 14, Ch. 494, L. 1993; Sec. 72-2-205, MCA 1991; redes. 72-2-114 by Code Commissioner, 1993.**

72-2-115. No taker. If there is no taker under the provisions of this chapter, the intestate estate passes to the state of Montana.

History: **En. 91A-2-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-105; amd. Sec. 16, Ch. 494, L. 1993; Sec. 72-2-207, MCA 1991; redes. 72-2-115 by Code Commissioner, 1993.**

72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1)(a), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-113(1)(c) or (1)(d), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

History: **En. 91A-2-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-106; amd. Sec. 13, Ch. 494, L. 1993; Sec. 72-2-204, MCA 1991; redes. 72-2-116 by Code Commissioner, 1993; amd. Sec. 67, Ch. 18, L. 1995; amd. Sec. 3, Ch. 592, L. 1995.**

Cross-References

Intestate succession — degree of kinship, Title 72, ch. 11, part 1.

72-2-117. Kindred of half blood. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

History: En. 91A-2-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-107; Sec. 72-2-211, MCA 1991; redes. 72-2-117 by Code Commissioner, 1993.

72-2-118. Afterborn heirs. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

History: En. 91A-2-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-108; amd. Sec. 18, Ch. 494, L. 1993; Sec. 72-2-212, MCA 1991; redes. 72-2-118 by Code Commissioner, 1993.

Cross-References

Omitted children, 72-2-332.

72-2-119. Advancements. (1) If an individual dies intestate as to all or a portion of the individual's estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

(a) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or

(b) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For purposes of subsection (1), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(3) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

History: En. 91A-2-110 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-110; amd. Sec. 15, Ch. 494, L. 1993; Sec. 72-2-206, MCA 1991; redes. 72-2-119 by Code Commissioner, 1993.

72-2-120. Debts to decedent. A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

History: En. Sec. 21, Ch. 494, L. 1993.

72-2-121. Alienage. No individual is disqualified to take as an heir because the individual or an individual through whom the individual claims is or has been an alien.

History: En. 91A-2-111 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-111; amd. Sec. 20, Ch. 494, L. 1993; Sec. 72-2-214, MCA 1991; redes. 72-2-121 by Code Commissioner, 1993.

72-2-122. Dower and curtesy abolished. The estates of dower and curtesy are abolished.

History: En. 91A-2-112 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-112; Sec. 72-2-701, MCA 1991; redes. 72-2-122 by Code Commissioner, 1993.

72-2-123. Individuals related to decedent through two lines. An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

History: **En. Sec. 4, Ch. 52, L. 1981; amd. Sec. 17, Ch. 494, L. 1993; Sec. 72-2-210, MCA 1991; redes. 72-2-123 by Code Commissioner, 1993.**

72-2-124. Parent and child relationship. (1) Except as provided in subsections (2) and (3), for the purposes of intestate succession by, through, or from a person, an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under Title 40, chapter 6, part 1.

(2) An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on:

(a) the relationship between the child and either natural parent; or

(b) the right of the child or a descendant of the child to inherit from or through the other natural parent.

(3) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the parent's and has not refused to support the child.

History: **En. 91A-2-109 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-109; amd. Sec. 3, Ch. 52, L. 1981; amd. Sec. 19, Ch. 494, L. 1993; Sec. 72-2-213, MCA 1991; redes. 72-2-124 by Code Commissioner, 1993.**

Part 2

Elective Share of Surviving Spouse

Part Cross-References

Uniform Disposition of Community Property Rights at Death Act, Title 72, ch. 9, part 1.

72-2-201 through 72-2-207. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-201. Renumbered 72-2-111.
72-2-202. Renumbered 72-2-112.
72-2-203. Renumbered 72-2-113.
72-2-204. Renumbered 72-2-116.
72-2-205. Renumbered 72-2-114.
72-2-206. Renumbered 72-2-119.
72-2-207. Renumbered 72-2-115.

72-2-208 and 72-2-209 reserved.

72-2-210 through 72-2-214. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-210. Renumbered 72-2-123.
72-2-211. Renumbered 72-2-117.
72-2-212. Renumbered 72-2-118.
72-2-213. Renumbered 72-2-124.
72-2-214. Renumbered 72-2-121.

72-2-215. Reporting duty of personal representative in estate involving alien heir. In any estate where money or property does not vest in any alien person because of the provisions of 72-2-121, it shall be the duty of the personal representative or special administrator, within 30 days of having completed and filed the inventory and statement of value, to furnish the attorney general with the following written information and file a copy in the probate proceedings:

(1) the names and addresses of the alien heirs, devisees, legatees, or beneficiaries in the estate;

(2) the share or proportionate share of each of the alien heirs;

(3) the stated value of the entire estate.

History: En. 91A-2-112 by Sec. 1, Ch. 370, L. 1977; R.C.M. 1947, 91A-2-111.1.

72-2-216 through 72-2-220 reserved.

72-2-221. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 1 year	supplemental amount only
1 year but less than 2 years	3% of the augmented estate
2 years but less than 3 years	6% of the augmented estate
3 years but less than 4 years	9% of the augmented estate
4 years but less than 5 years	12% of the augmented estate
5 years but less than 6 years	15% of the augmented estate
6 years but less than 7 years	18% of the augmented estate
7 years but less than 8 years	21% of the augmented estate
8 years but less than 9 years	24% of the augmented estate
9 years but less than 10 years	27% of the augmented estate
10 years but less than 11 years	30% of the augmented estate
11 years but less than 12 years	34% of the augmented estate
12 years but less than 13 years	38% of the augmented estate
13 years but less than 14 years	42% of the augmented estate
14 years but less than 15 years	46% of the augmented estate
15 years or more	50% of the augmented estate

(2) If the sum of the amounts described in 72-2-222(2)(d), 72-2-227(1)(a), and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under 72-2-227(2) and (3) is less than $50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to $50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in 72-2-227(2) and (3).

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

History: En. 91A-2-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-201; amd. Sec. 50, Ch. 494, L. 1993; Sec. 72-2-702, MCA 1991; redes. 72-2-221 by Code Commissioner, 1993; amd. Sec. 4, Ch. 592, L. 1995.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Homestead exemption — execution, Title 70, ch. 32, part 2.

Share of spouse, 72-2-112.

Augmented estate, 72-2-222.

72-2-222. Augmented estate. (1) (a) As used in this section, the following definitions apply:

(i) "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, that are included in the augmented estate under subsection (2)(b).

(ii) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(iii) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(iv) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(v) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(vi) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate and includes a power to revoke or invade the principal of a trust or other property arrangement.

(vii) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(viii) "Property" includes values subject to a beneficiary designation.

(ix) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(x) "Transfer", as it relates to a transfer by or of the decedent, includes:

(A) an exercise or release of a presently exercisable general power of appointment held by the decedent;

(B) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

(C) an exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of a power described in subsection (2)(b)(ii)(B) that the decedent conferred on a nonadverse party.

(b) (i) As used in subsection (2)(b)(iii)(A), "termination":

(A) with respect to a right or interest in property, means that the right or interest terminated by the terms of the governing instrument or that the decedent transferred or relinquished the right or interest; and

(B) with respect to a power over property, means that the power terminated by exercise, release, lapse, or default or otherwise.

(ii) With respect to a power described in subsection (2)(b)(i)(A), "termination" means that the power terminated by exercise or release, but not by lapse or by default or otherwise.

(2) The augmented estate consists of the sum of:

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims;

(b) the value of the decedent's nonprobate transfers to others, which are composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) property of any of the following types that passed outside probate at the decedent's death:

(A) property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment; the amount included is the value of the property subject to the power, to the extent that the property was passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse;

(B) the decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship; the amount included is the value of the decedent's fractional interest, to the extent that the fractional interest was passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse; or

(C) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship; the amount included is the value of the decedent's ownership interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;

(ii) property transferred in any of the following forms by the decedent during marriage:

(A) any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent that the decedent's right terminated at or continued beyond the decedent's death; the amount included is the value of the fraction of the property to which the decedent's right related, to the extent that the fraction of the property was passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse; or

(B) any transfer in which the decedent created a power over the income or principal of the transferred property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, for the benefit of the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate; the amount included is the value of the property subject to the power, to the extent that the power was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent that the property subject to the power passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse; and

(iii) property that passed during marriage and during the 2-year period preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(A) any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection (2)(b)(i)(A), (2)(b)(i)(B), (2)(b)(i)(C), or (2)(b)(ii) if the right, interest, or power had not terminated until the decedent's death; the amount included is the value of the property that would have been included under these subsections, except that that property is valued at the time that the right, interest, or power terminated, and is included only to the extent that the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse; or

(B) any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse; the amount included is the value of the transferred property to the extent that the aggregate transfers to any one donee in either of the 2 years exceeded $10,000;

(c) the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which are composed of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(i) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(ii) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner;

(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death; and

(iv) all other property that would have been included in the augmented estate under subsection (2)(b)(i) or (2)(b)(ii) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, but excluding property passing to the surviving spouse under the federal social security system; and

(d) except to the extent included in the augmented estate under subsection (2)(a) or (2)(c), the value of:

(i) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(A) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(B) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(C) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(ii) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included in subsections (2)(d)(i)(A) and (2)(d)(i)(B), had the spouse been the decedent. Property included under this subsection (2)(d)(ii) is valued at the decedent's death, taking into account the fact that the decedent predeceased the spouse, except that, for purposes of subsections (2)(d)(i)(A) and (2)(d)(i)(B), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. The value of property included under this subsection (2)(d)(ii) is reduced in each category by enforceable claims against the included property and is reduced by enforceable claims against the surviving spouse.

(3) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse; or

(c) if the property is life insurance, accident insurance, pension, profit-sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate.

(4) The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(5) In case of overlapping application to the same property of the provisions of subsection (2), the property is included in the augmented estate under the provision yielding the highest value, but under any one, but only one, of the overlapping provisions if they all yield the same value.

History: En. 91A-2-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-202; amd. Sec. 6, Ch. 52, L. 1981; amd. Sec. 53, Ch. 494, L. 1993; Sec. 72-2-705, MCA 1991; redes. 72-2-222 by Code Commissioner, 1993; amd. Sec. 5, Ch. 592, L. 1995.

Cross-References

Public retirement systems, Title 19.

Homestead exemption, Title 70, ch. 32.

Exempt property and allowances, Title 72, ch. 2, part 4.

72-2-223. Right of election personal to surviving spouse — incapacitated surviving spouse. (1) The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.

(2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under 72-2-227(2) and (3) and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse qualifies on the basis of need.

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

(i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

(ii) to that predeceased spouse's heirs under 72-2-721.

History: En. 91A-2-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-203; amd. Sec. 51, Ch. 494, L. 1993; Sec. 72-2-703, MCA 1991; redes. 72-2-223 by Code Commissioner, 1993; amd. Sec. 6, Ch. 592, L. 1995.

72-2-224. Waiver of right to elect and of other rights. (1) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance or any of them may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse. The written contract, agreement, or waiver is enforceable without consideration.

(2) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(a) the surviving spouse did not execute the waiver voluntarily; or

(b) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the decedent.

(3) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(4) Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to that spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

History: En. 91A-2-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-204; amd. Sec. 6, Ch. 494, L. 1993; Sec. 72-2-102, MCA 1991; redes. 72-2-224 by Code Commissioner, 1993; amd. Sec. 7, Ch. 592, L. 1995.

Cross-References

Homestead exemption, Title 70, ch. 32.

Family allowance, 72-2-414.

72-2-225. Proceeding for elective share — time limit. (1) Except as provided in subsection (2), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (2), the decedent's nonprobate transfers to others described in 72-2-222(2)(b), is not included within the augmented estate for the purpose of computing the elective share if the petition is filed more than 9 months after the decedent's death.

(2) Within 9 months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others described in 72-2-222(2)(b), is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(3) The surviving spouse may withdraw a demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under 72-2-227. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under 72-2-227 if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

History: En. 91A-2-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-205; amd. Sec. 8, Ch. 52, L. 1981; amd. Sec. 55, Ch. 494, L. 1993; Sec. 72-2-707, MCA 1991; redes. 72-2-225 by Code Commissioner, 1993; amd. Sec. 10, Ch. 592, L. 1995.

72-2-226. Effect of election on statutory benefits. If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

History: En. 91A-2-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-206; amd. Sec. 8, Ch. 582, L. 1989; amd. Sec. 52, Ch. 494, L. 1993; Sec. 72-2-704, MCA 1991; redes. 72-2-226 by Code Commissioner, 1993.

Cross-References

Homestead exemption, Title 70, ch. 32.

Exempt property and allowances, Title 72, ch. 2, part 4.

Disclaimer of property interests, 72-2-811.

Community property — disposition upon death, 72-9-107.

72-2-227. Sources from which elective share payable. (1) In the proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

(a) amounts included in the augmented estate under 72-2-222(2)(a) that pass or have passed to the surviving spouse by testate or intestate succession;

(b) amounts included in the augmented estate under 72-2-222(2)(c);

(c) amounts included in the augmented estate that would have passed to the spouse but were disclaimed; and

(d) amounts included in the augmented estate under 72-2-222(2)(d) up to the applicable percentage thereof. For purposes of this subsection (d), the "applicable percentage" is twice the elective-share percentage set forth in the schedule in 72-2-221(1) appropriate to the length of time the spouse and the decedent were married to each other.

(2) If, after the application of subsection (1), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts included

under 72-2-222(2)(b)(iii)(A) or (2)(b)(iii)(B), are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others are applied so that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(3) If, after the application of subsections (1) and (2), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is applied so that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of that remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

History: En. 91A-2-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-207; amd. Sec. 7, Ch. 52, L. 1981; amd. Sec. 54, Ch. 494, L. 1993; Sec. 72-2-706, MCA 1991; redes. 72-2-227 by Code Commissioner, 1993; amd. Sec. 11, Ch. 592, L. 1995.

72-2-228. Protection of payors and other third parties. (1) Although under 72-2-222 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument or for having taken any other action in reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable only for actions taken 2 or more business days after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed. The written notice must indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(2) The written notice must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates

located in the county of the decedent's residence. The availability of an action under this section does not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated beneficiary. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

(3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

History: En. Sec. 9, Ch. 592, L. 1995.

Cross-References

Summons — issuance, Rule 4C, M.R.Civ.P.
(See Title 25, ch. 20).

72-2-229 reserved.

72-2-230. Personal liability of recipients. (1) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the person is liable.

(2) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of property, or benefit or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in 72-2-227, to the person who would have been entitled to it were that section or part of that section not preempted.

History: En. Sec. 8, Ch. 592, L. 1995.

Part 3

Spouse and Children Unprovided for in Wills

72-2-301. Renumbered 72-2-521 by Code Commissioner, 1993.

72-2-302. Renumbered 72-2-522 by Code Commissioner, 1993.

72-2-303. Repealed. Sec. 134, Ch. 494, L. 1993.

History: **En. 91A-2-503 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-503.**

72-2-304. Renumbered 72-2-524 by Code Commissioner, 1993.

72-2-305. Renumbered 72-2-525 by Code Commissioner, 1993.

72-2-306. Renumbered 72-2-526 by Code Commissioner, 1993.

72-2-307 through 72-2-310 reserved.

72-2-311 through 72-2-314. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-311. Renumbered 72-2-530.
72-2-312. Renumbered 72-2-533.
72-2-313. Renumbered 72-2-532.
72-2-314. Renumbered 72-2-531.

72-2-315 through 72-2-320 reserved.

72-2-321. Renumbered 72-2-527 by Code Commissioner, 1993.

72-2-322. Renumbered 72-2-528 by Code Commissioner, 1993.

72-2-323. Renumbered 72-2-529 by Code Commissioner, 1993.

72-2-324 through 72-2-330 reserved.

72-2-331. Entitlement of spouse — premarital will. (1) If a testator's surviving spouse married the testator after the execution of the will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor devised to the descendant of such a child or passes under 72-2-613 or 72-2-614 to such a child or to a descendant of such a child, unless:

(a) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(b) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under 72-2-613 or 72-2-614 to a descendant of such a child, abate as provided in 72-3-901.

History: En. 91A-2-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-301; amd. Sec. 48, Ch. 494, L. 1993; Sec. 72-2-601, MCA 1991; redes. 72-2-331 by Code Commissioner, 1993; amd. Sec. 12, Ch. 592, L. 1995.

72-2-332. Omitted children. (1) Except as provided in subsection (2), if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subsection (1)(b), devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsections (1)(a) and (1)(b) do not apply if:

(a) it appears from the will that the omission was intentional; or

(b) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) If at the time of execution of the will the testator fails to provide in the testator's will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by subsection (1)(a), devises made by the will abate as provided in 72-3-901.

History: En. 91A-2-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-302; amd. Sec. 49, Ch. 494, L. 1993; Sec. 72-2-602, MCA 1991; redes. 72-2-332 by Code Commissioner, 1993; amd. Sec. 13, Ch. 592, L. 1995.

Cross-References

Afterborn heirs, 72-2-118.

Part 4

Exempt Property and Allowances

Part Cross-References

Uniform Disposition of Community Property Rights at Death Act, Title 72, ch. 9, part 1.

72-2-401. Renumbered 72-2-536 by Code Commissioner, 1993.

72-2-402. Renumbered 72-2-535 by Code Commissioner, 1993.

72-2-403 through 72-2-410 reserved.

72-2-411. Applicable law. This part applies to the estate of a decedent who dies domiciled in this state. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

History: En. Sec. 56, Ch. 494, L. 1993.

72-2-412. Homestead allowance. A decedent's surviving spouse is entitled to a homestead allowance of $20,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $20,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

History: En. 91A-2-401 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 153, L. 1977; R.C.M. 1947, 91A-2-401; amd. Sec. 57, Ch. 494, L. 1993; Sec. 72-2-801, MCA 1991; redes. 72-2-412 by Code Commissioner, 1993.

Cross-References

Homestead allowance, Title 70, ch. 32.

72-2-413. Exempt property. In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding $10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $10,000 or if there is not $10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided, by intestate succession, or by way of elective share.

History: En. 91A-2-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-402; amd. Sec. 58, Ch. 494, L. 1993; Sec. 72-2-802, MCA 1991; redes. 72-2-413 by Code Commissioner, 1993.

72-2-414. Family allowance. (1) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.

(2) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

History: En. 91A-2-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-403; amd. Sec. 59, Ch. 494, L. 1993; Sec. 72-2-803, MCA 1991; redes. 72-2-414 by Code Commissioner, 1993.

Cross-References

Inheritance tax exemptions, 72-16-311 through 72-16-319.

72-2-415. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding $18,000 or periodic installments not exceeding $1,500 per month for 1 year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

(2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under 72-2-223(2).

History: En. 91A-2-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-404; amd. Sec. 60, Ch. 494, L. 1993; Sec. 72-2-804, MCA 1991; redes. 72-2-415 by Code Commissioner, 1993.

Part 5

Wills, Will Contracts, and Custody and Deposit of Wills

72-2-501. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-2-603 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-603.

72-2-502. Renumbered 72-2-612 by Code Commissioner, 1993.

72-2-503. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-2-611 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-611.

72-2-504. Renumbered 72-2-713 by Code Commissioner, 1993.

72-2-505 through 72-2-510 reserved.

72-2-511. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. 91A-2-601 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-601.

72-2-512 through 72-2-519. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-512.	Renumbered 72-2-613.
72-2-513.	Renumbered 72-2-614.
72-2-514.	Renumbered 72-2-617.
72-2-515.	Renumbered 72-2-619.
72-2-516.	Renumbered 72-2-616.
72-2-517.	Renumbered 72-2-615.
72-2-518.	Renumbered 72-2-618.
72-2-519.	Renumbered 72-2-537.

72-2-520 reserved.

72-2-521. Who may make a will. An individual 18 or more years of age who is of sound mind may make a will.

History: En. 91A-2-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-501; amd. Sec. 22, Ch. 494, L. 1993; Sec. 72-2-301, MCA 1991; redes. 72-2-521 by Code Commissioner, 1993.

72-2-522. Execution — witnessed wills — holographic wills. (1) Except as provided in 72-2-523, 72-2-526, 72-2-533, and subsection (2) of this section, a will must be:

(a) in writing;

(b) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(c) signed by at least two individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will as described in subsection (1)(b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(3) Intent that the document constitute the testator's will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

History: En. 91A-2-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-502; amd. Sec. 23, Ch. 494, L. 1993; Sec. 72-2-302, MCA 1991; redes. 72-2-522 by Code Commissioner, 1993.

72-2-523. Writings intended as wills. Although a document or writing added upon a document was not executed in compliance with 72-2-522, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

(1) the decedent's will;
(2) a partial or complete revocation of the will;
(3) an addition to or an alteration of the will; or
(4) a partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will.

History: En. Sec. 34, Ch. 494, L. 1993.

72-2-524. Self-proved will. (1) A will may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, ..., the testator, sign my name to this instrument this ...... day of ......, 19...., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

....
Testator

We, ..., ..., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's will and that the testator signs it willingly (or willingly directs another to sign for the testator), that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

....
Witness

....
Witness

THE STATE OF ....
COUNTY OF ....

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ...... day of ......

(SEAL) (Signed).........................
(Official capacity of officer)
....

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF ....
COUNTY OF ....

We, ..., ..., and ...., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that the testator signed willingly (or willingly directed another to sign for the testator), that the testator executed it as the testator's free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of the witness's knowledge the testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

.... Testator
.... Witness
.... Witness

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ...... day of ......, ...

(SEAL) (Signed).........................
(Official capacity of officer)
....

(3) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution.

History: **En. 91A-2-504 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-504; amd. Sec. 5, Ch. 52, L. 1981; amd. Sec. 24, Ch. 494, L. 1993; Sec. 72-2-304, MCA 1991; redes. 72-2-524 by Code Commissioner, 1993.**

Cross-References

What constitutes undue influence, 28-2-407.

72-2-525. Who may witness. (1) An individual generally competent to be a witness may act as a witness to a will.

(2) The signing of a will by an interested witness does not invalidate the will or any provision of it.

History: En. 91A-2-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-505; amd. Sec. 1, Ch. 6, L. 1979; amd. Sec. 5, Ch. 582, L. 1989; amd. Sec. 25, Ch. 494, L. 1993; Sec. 72-2-305, MCA 1991; redes. 72-2-525 by Code Commissioner, 1993.

72-2-526. Choice of law as to execution. A written will is valid if executed in compliance with 72-2-522 or 72-2-523 or if its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

History: En. 91A-2-506 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-506; amd. Sec. 26, Ch. 494, L. 1993; Sec. 72-2-306, MCA 1991; redes. 72-2-526 by Code Commissioner, 1993.

72-2-527. Revocation by writing or act. (1) A will or any part of a will is revoked:

(a) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(b) by performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part of the will or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subsection (b), "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touched any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent they are not inconsistent.

History: En. 91A-2-507 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-507; amd. Sec. 31, Ch. 494, L. 1993; Sec. 72-2-321, MCA 1991; redes. 72-2-527 by Code Commissioner, 1993.

72-2-528. Revocation by change of circumstances. Except as provided in 72-2-813 and 72-2-814, a change of circumstances does not revoke a will or any part of it.

History: En. 91A-2-508 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-508; amd. Sec. 32, Ch. 494, L. 1993; Sec. 72-2-322, MCA 1991; redes. 72-2-528 by Code Commissioner, 1993.

Cross-References

Declaration of invalidity of marriage, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

72-2-529. Revival of revoked will. (1) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under 72-2-527(1)(b), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under 72-2-527(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(3) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

History: En. 91A-2-509 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-509; amd. Sec. 33, Ch. 494, L. 1993; Sec. 72-2-323, MCA 1991; redes. 72-2-529 by Code Commissioner, 1993.

72-2-530. Incorporation by reference. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

History: En. 91A-2-510 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-510; amd. Sec. 27, Ch. 494, L. 1993; Sec. 72-2-311, MCA 1991; redes. 72-2-530 by Code Commissioner, 1993.

72-2-531. Testamentary additions to trusts. (1) (a) A will may validly devise property to the trustee of a trust established or to be established:

(i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or

(ii) at the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.

(b) The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

(2) Unless the testator's will provides otherwise, property devised to a trust described in subsection (1) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised and must be

administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(3) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

History: En. 91A-2-511 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-511; amd. Sec. 30, Ch. 494, L. 1993; Sec. 72-2-314, MCA 1991; redes. 72-2-531 by Code Commissioner, 1993.

Cross-References

Trust Code — general provisions, Title 72, ch. 33.

72-2-532. Events of independent significance. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

History: En. 91A-2-512 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-512; amd. Sec. 29, Ch. 494, L. 1993; Sec. 72-2-313, MCA 1991; redes. 72-2-532 by Code Commissioner, 1993.

72-2-533. Separate writing identifying disposition of tangible personal property. (1) Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money.

(2) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the testator's death;

(b) prepared before or after the execution of the will;

(c) altered by the testator after its preparation; and

(d) a writing that has no significance apart from its effect upon the dispositions made by the will.

History: En. 91A-2-513 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-513; amd. Sec. 28, Ch. 494, L. 1993; Sec. 72-2-312, MCA 1991; redes. 72-2-533 by Code Commissioner, 1993.

72-2-534. Contracts concerning succession. (1) A contract to make a will or devise or not to revoke a will or devise or to die intestate, if executed after July 1, 1975, may be established only by:

(a) provisions of a will stating material provisions of the contract;

(b) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(c) a writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: En. 91A-2-701 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-701; amd. Sec. 9, Ch. 494, L. 1993; Sec. 72-2-105, MCA 1991; redes. 72-2-534 by Code Commissioner, 1993.

Cross-References

Circumstances surrounding execution of contract, 1-4-102, 1-4-109.

General rules of interpretation of contracts, Title 28, ch. 3, part 2.

72-2-535. Deposit of will with court in testator's lifetime. A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that person on request or the court may deliver the will to the appropriate court.

History: En. 91A-2-901 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-901; amd. Sec. 36, Ch. 494, L. 1993; Sec. 72-2-402, MCA 1991; redes. 72-2-535 by Code Commissioner, 1993.

72-2-536. Duty of custodian of will — liability. After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and, if none is known, to an appropriate court. A person who willfully fails to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure. A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

History: En. 91A-2-902 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-902; amd. Sec. 35, Ch. 494, L. 1993; Sec. 72-2-401, MCA 1991; redes. 72-2-536 by Code Commissioner, 1993.

Cross-References

Power to punish for contempt, 3-1-403.

Contempts, Title 3, ch. 1, part 5.

72-2-537. Penalty clause for contest. A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: En. 91A-3-905 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-905; amd. Sec. 46, Ch. 494, L. 1993; Sec. 72-2-519, MCA 1991; redes. 72-2-537 by Code Commissioner, 1993.

Part 6

Rules of Construction Applicable Only to Wills

Part Cross-References

Uniform Disposition of Community Property Rights at Death Act, Title 72, ch. 9, part 1.

72-2-601. Renumbered 72-2-331 by Code Commissioner, 1993.

72-2-602. Renumbered 72-2-332 by Code Commissioner, 1993.

72-2-603 through 72-2-610 reserved.

72-2-611. Scope. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

History: En. Sec. 47, Ch. 494, L. 1993.

72-2-612. Will may pass all property and after-acquired property. A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

History: En. 91A-2-604 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-604; amd. Sec. 37, Ch. 494, L. 1993; Sec. 72-2-502, MCA 1991; redes. 72-2-612 by Code Commissioner, 1993.

72-2-613. Antilapse — deceased devisee — class gifts. (1) As used in this section, the following definitions apply:

(a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of the will may take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under 72-2-712.

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of this subsection (b), "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

History: En. 91A-2-605 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-605; amd. Sec. 39, Ch. 494, L. 1993; Sec. 72-2-512, MCA 1991; redes. 72-2-613 by Code Commissioner, 1993; amd. Sec. 14, Ch. 592, L. 1995.

72-2-614. Failure of testamentary provision. (1) Except as provided in 72-2-613, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) Except as provided in 72-2-613, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

History: En. 91A-2-606 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-606; amd. Sec. 40, Ch. 494, L. 1993; Sec. 72-2-513, MCA 1991; redes. 72-2-614 by Code Commissioner, 1993.

72-2-615. Increase in securities — accessions. (1) If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and if the securities are of any of the following types:

(a) securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;

(b) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or

(c) securities of the same organization acquired as a result of a plan of reinvestment.

(2) Distributions in cash before death with respect to a described security are not part of the devise.

History: En. 91A-2-607 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-607; amd. Sec. 7, Ch. 582, L. 1989; amd. Sec. 44, Ch. 494, L. 1993; Sec. 72-2-517, MCA 1991; redes. 72-2-615 by Code Commissioner, 1993.

Cross-References

Investment securities — transfer, Title 30, ch. 8, part 3.

Securities regulation, Title 30, ch. 10.

72-2-616. Nonademption of specific devises — unpaid proceeds of sale, condemnation, or insurance — sale by conservator or agent. (1) A specific devisee has the right to the specifically devised property in the testator's estate at death and:

(a) any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(d) property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e).

(2) If specifically devised property is sold or mortgaged by a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance proceeds, or recovery for an injury to property is paid to a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of the specific devisee under subsection (2) is reduced by any right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

(a) "incapacitated principal" means a principal who is an incapacitated person;

(b) no adjudication of incapacity before death is necessary; and

(c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

History: En. 91A-2-608 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-608; amd. Sec. 6, Ch. 582, L. 1989; amd. Sec. 43, Ch. 494, L. 1993; Sec. 72-2-516, MCA 1991; redes. 72-2-616 by Code Commissioner, 1993.

72-2-617. Nonexoneration. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

History: En. 91A-2-609 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-609; amd. Sec. 41, Ch. 494, L. 1993; Sec. 72-2-514, MCA 1991; redes. 72-2-617 by Code Commissioner, 1993.

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Mortgages, Pledges, and Liens, Title 71.

72-2-618. Exercise of power of appointment. In the absence of a requirement that a power of appointment be exercised by a reference to the power or by an express or specific reference to the power, a general residuary clause in a will or a will making general disposition of all of the testator's property expresses an intention to exercise a power of appointment held by the testator only if:

(1) the power is a general power and the creating instrument does not contain a gift if the power is not exercised; or

(2) the testator's will manifests an intention to include the property subject to the power.

History: En. 91A-2-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-610; amd. Sec. 45, Ch. 494, L. 1993; Sec. 72-2-518, MCA 1991; redes. 72-2-618 by Code Commissioner, 1993.

72-2-619. Ademption by satisfaction. (1) Property that a testator gave in the testator's lifetime to a person is treated as a satisfaction of a devise in whole or in part only if:

(a) the will provides for deduction of the gift;

(b) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or

(c) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(2) For purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying 72-2-613 and 72-2-614, unless the testator's contemporaneous writing provides otherwise.

History: En. 91A-2-612 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-612; amd. Sec. 42, Ch. 494, L. 1993; Sec. 72-2-515, MCA 1991; redes. 72-2-619 by Code Commissioner, 1993.

Part 7

Rules of Construction Applicable to Wills and Other Governing Instruments

72-2-701 through 72-2-707. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-701.	Renumbered 72-2-122.
72-2-702.	Renumbered 72-2-221.
72-2-703.	Renumbered 72-2-223.
72-2-704.	Renumbered 72-2-226.
72-2-705.	Renumbered 72-2-222.
72-2-706.	Renumbered 72-2-227.
72-2-707.	Renumbered 72-2-225.

72-2-708 through 72-2-710 reserved.

72-2-711. Scope. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

History: En. Sec. 61, Ch. 494, L. 1993.

72-2-712. Requirement of survival by one hundred twenty hours. (1) For the purposes of chapters 1 through 5, except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event,

including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. However, survival of the event or the specified period must be established by clear and convincing evidence.

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and convincing evidence; or

(d) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. However, survival must be established by clear and convincing evidence.

(5) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(6) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

History: En. Sec. 62, Ch. 494, L. 1993; amd. Sec. 15, Ch. 592, L. 1995.

72-2-713. Choice of law as to meaning and effect of governing instrument. The meaning and legal effect of a governing instrument is determined by the local law of the state selected by the transferor in the governing instrument unless the application of that law is contrary to the provisions relating to the elective share described in part 7, the provisions relating to exempt property and allowances described in part 8, or any other public policy of this state otherwise applicable to the disposition.

History: En. 91A-2-602 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-602; amd. Sec. 38, Ch. 494, L. 1993; Sec. 72-2-504, MCA 1991; redes. 72-2-713 by Code Commissioner, 1993.

72-2-714. Power of appointment — meaning of specific reference requirement. If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

History: En. Sec. 63, Ch. 494, L. 1993.

72-2-715. Class gifts construed to accord with intestate succession. (1) Adopted individuals and individuals born out of wedlock and their respective descendants if appropriate to the class are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(2) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse.

(3) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

History: En. Sec. 64, Ch. 494, L. 1993.

72-2-716. Life insurance — retirement plan — account with POD designation — transfer-on-death registration — deceased beneficiary. (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(e) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child of the decedent.

(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-712.

(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim must be mailed to the payor's main office or home by certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(5) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

History: **En. Sec. 65, Ch. 494, L. 1993; amd. Sec. 16, Ch. 592, L. 1995.**

Cross-References

Life insurance, Title 33, ch. 20.

72-2-717. Survivorship with respect to future interests under terms of trust — substitute takers. (1) As used in this section, the following definitions apply:

(a) "Alternative future interest" means an expressly created future interest that may take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

(d) "Distribution date" with respect to a future interest means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

(e) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

(f) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

(g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under 72-2-712.

(2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(iii) "Younger-generation future interest" means a future interest that:

(A) is to a descendant of a beneficiary of the primary future interest;

(B) is an alternative future interest with respect to the primary future interest;

(C) is a future interest for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's heirs under 72-2-721.

(5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(b) if no taker is produced by the application of subsection (5)(a), the property passes as provided in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

History: **En. Sec. 66, Ch. 494, L. 1993; amd. Sec. 17, Ch. 592, L. 1995.**

72-2-718. Class gifts to "descendants", "issue", or "heirs of the body" — form of distribution if none specified. If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in such shares as they would receive under the applicable law of intestate succession if the designated ancestor had then died intestate owning the subject matter of the class gift.

History: **En. Sec. 67, Ch. 494, L. 1993.**

72-2-719. Representation — per capita at each generation — per stirpes. (1) As used in this section, the following definitions apply:

(a) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is considered to have predeceased the distribution date under 72-2-712.

(b) "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but may occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under 72-2-712.

(2) (a) If a governing instrument calls for property to be distributed "per capita at each generation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) (a) If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are:

(i) surviving children of the designated ancestor; and

(ii) deceased children who left surviving descendants.

(b) Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) (a) If an applicable statute or a governing instrument calls for property to be distributed "by representation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(5) For the purposes of subsections (2) through (4), an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

History: En. Sec. 68, Ch. 494, L. 1993; amd. Sec. 18, Ch. 592, L. 1995.

72-2-720. Worthier title doctrine abolished. The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", or "family" or language of similar import does not create or presumptively create a reversionary interest in the transferor.

History: En. Sec. 69, Ch. 494, L. 1993.

72-2-721. Interests in "heirs" and like. If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the property passes to those persons, including the state, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if the designated individual died at that time. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

History: **En. Sec. 70, Ch. 494, L. 1993; amd. Sec. 19, Ch. 592, L. 1995.**

Part 8

General Provisions Concerning Probate and Nonprobate Transfers

72-2-801 through 72-2-804. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-2-801.	Renumbered 72-2-412.
72-2-802.	Renumbered 72-2-413.
72-2-803.	Renumbered 72-2-414.
72-2-804.	Renumbered 72-2-415.

72-2-805 through 72-2-810 reserved.

72-2-811. Disclaimer of property interests. (1) (a) A person or the representative of a person to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of attorney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) The following rules govern the time when a disclaimer must be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant may disclaim as a separate interest any property or interest in property devolving to the joint tenant by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest in the property that is the subject of a joint tenancy devolving to the joint tenant if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit under it.

(d) If real property or an interest in the property is disclaimed, a copy of the disclaimer may be recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed is located.

(3) The disclaimer must:

(a) describe the property or interest disclaimed;

(b) declare the disclaimer and extent of the disclaimer; and

(c) be signed by the disclaimant.

(4) The following are the effects of a disclaimer:

(a) If property or an interest in property devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of the death of the decedent.

(b) If property or an interest in property devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and on all persons claiming through or under either of them.

(5) The right to disclaim property or an interest in the property is barred by:

(a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest or a contract therefor;

(b) a written waiver of the right to disclaim;

(c) an acceptance of the property or interest or benefit under it; or

(d) a sale of the property or interest under judicial sale made before the disclaimer is made.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under any other statute.

(7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after October 1, 1993.

History: En. 91A-2-801 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-801; amd. Sec. 1, Ch. 52, L. 1981; amd. Sec. 1, Ch. 511, L. 1983; amd. Sec. 5, Ch. 494, L. 1993; Sec. 72-2-101, MCA 1991; redes. 72-2-811 by Code Commissioner, 1993; amd. Sec. 20, Ch. 592, L. 1995.

72-2-812. Effect of divorce, annulment, or decree of separation. (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of chapter 2, parts 1 through 4, and of 72-3-501 through 72-3-508, a surviving spouse does not include:

(a) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;

(b) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(c) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

History: En. 91A-2-802 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-802; amd. Sec. 7, Ch. 494, L. 1993; Sec. 72-2-103, MCA 1991; redes. 72-2-812 by Code Commissioner, 1993.

Cross-References

Declaration of invalidity of marriage, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(8) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in a homicide. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of the service is that described in subsection (8)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section. Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(9) (a) A bona fide purchaser who purchases property or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, other than the federal Employee Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103.

History: En. 91A-2-803 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-803; amd. Sec. 3, Ch. 582, L. 1989; amd. Sec. 8, Ch. 494, L. 1993; Sec. 72-2-104, MCA 1991; redes. 72-2-813 by Code Commissioner, 1993; amd. Sec. 21, Ch. 592, L. 1995.

Cross-References

Limitations on payment of retirement benefits if beneficiary causes member's death, 19-2-804.

Homicide, Title 45, ch. 5, part 1.

Constructive trust, 72-33-219.

72-2-814. Revocation of probate and nonprobate transfers by divorce — no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person or who receives from

a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, other than the federal Employee Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

History: En. Sec. 71, Ch. 494, L. 1993; amd. Sec. 22, Ch. 592, L. 1995.

Cross-References

Dissolution of marriage, Title 40, ch. 4, part 1.

Part 9

Uniform International Will Act

72-2-901. Definitions. In this part, the following definitions apply:

(1) "Authorized person" and "person authorized to act in connection with international wills" means a person who by 72-2-908 or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by the foreign service regulations, is empowered to supervise the execution of international wills.

(2) "International will" means a will executed in conformity with 72-2-902 through 72-2-905.

History: En. Sec. 1, Ch. 62, L. 1991.

72-2-902. Validity. (1) The form of a will is valid, regardless of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this part.

(2) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(3) This part does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

History: En. Sec. 2, Ch. 62, L. 1991.

72-2-903. Requirements. (1) An international will must be made in writing. It need not be written by the testator himself. It may be written in any language, by hand, or by any other means.

(2) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents of the will. The testator need not inform the witnesses or the authorized person of the contents of the will.

(3) In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

(4) If the testator is unable to sign, the absence of his signature does not affect the validity of the international will if the testator indicates the reason for his inability to sign and the authorized person makes note of the inability on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for him if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name for him.

(5) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

History: **En. Sec. 3, Ch. 62, L. 1991.**

72-2-904. Other points of form. (1) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(2) The date of the will must be the date of its signature by the authorized person.

(3) The authorized person shall ask the testator whether he wished to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator, the place where he intends to have his will kept must be mentioned in the certificate provided for in 72-2-905.

(4) A will executed in compliance with 72-2-903 is not invalid merely because it does not comply with this section.

History: **En. Sec. 4, Ch. 62, L. 1991.**

72-2-905. Certificate. The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of this part for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE
(Convention of October 26, 1973)

I, ______________ (name, address, and capacity), a person authorized to act in connection with international wills, certify that on _________ (date) at ____________ (place) (testator) _________________ (name, address, date, and place of birth) in my presence and that of the witnesses

(a) ______________ (name, address, date, and place of birth)

(b) ______________ (name, address, date, and place of birth) has declared that the attached document is his will and that he knows the contents thereof.

I furthermore certify that:

(a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed;

(2) following a declaration of the testator stating that he was unable to sign his will for the following reason ________________, I have mentioned this declaration on the will, and the signature has been affixed by ______________ (name and address);

(b) the witnesses and I have signed the will;

(c) each page of the will has been signed by _____________ and numbered;

(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

*(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

PLACE OF EXECUTION
DATE
SIGNATURE and, if necessary, SEAL

* to be completed if appropriate

History: **En. Sec. 5, Ch. 62, L. 1991.**

72-2-906. Effect of certificate. In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this part. The absence or irregularity of a certificate does not affect the formal validity of a will under this part.

History: **En. Sec. 6, Ch. 62, L. 1991.**

72-2-907. Revocation. An international will is subject to the ordinary rules of revocation of wills.

History: **En. Sec. 7, Ch. 62, L. 1991.**

72-2-908. Persons authorized to act in relation to international will — eligibility — recognition by authorizing agency. Individuals who have been admitted to practice law before the courts of this state and are currently licensed are authorized persons in relation to international wills.

History: **En. Sec. 9, Ch. 62, L. 1991.**

72-2-909. International will information registration. The secretary of state shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or individual-identifying number established by law, address, and date and place of birth of the testator and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The secretary of state, at the request of the authorized person, may cause the information he receives about the execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator if that other registry system adheres to rules protecting the confidentiality of the information similar to those established in this state.

History: En. Sec. 10, Ch. 62, L. 1991.

72-2-910. Source and construction. Sections 72-2-901 through 72-2-907 derive from the Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this part, regard must be given to its international origin and to the need for uniformity in its interpretation.

History: En. Sec. 8, Ch. 62, L. 1991.

Part 10

Uniform Statutory Rule Against Perpetuities — Honorary Trusts

Part Cross-References

Perpetuities, Art. XIII, sec. 6, Mont. Const.

72-2-1001. Short title. This part may be cited as the "Uniform Statutory Rule Against Perpetuities".

History: En. Sec. 1, Ch. 250, L. 1989; Sec. 70-1-801, MCA 1991; redes. 72-2-1001 by Code Commissioner, 1993.

72-2-1002. Statutory rule against perpetuities. (1) A nonvested property interest is invalid unless:

(a) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(b) the interest either vests or terminates within 90 years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(b) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(b) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, a clause in a governing instrument purports to postpone the vesting or termination of any interest or trust until, purports to disallow the vesting or termination of any interest or trust beyond, purports to require all interests or trusts to vest or terminate no later than, or operates in any similar fashion upon the later of:

(a) the expiration of a period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement; or

(b) the death of, or the expiration of a period not exceeding 21 years after the death of, the survivor of specified lives in being at the creation of the trust or other property arrangement, then the portion of the clause pertaining to the period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement must be disregarded, and the clause operates upon the death of, or upon the expiration of the period not exceeding 21 years after the death of, the survivor of the specified lives in being at the creation of the trust or other property arrangement.

History: En. Sec. 2, Ch. 250, L. 1989; amd. Sec. 1, Ch. 26, L. 1991; Sec. 70-1-802, MCA 1991; redes. 72-2-1002 by Code Commissioner, 1993.

72-2-1003. When nonvested property interest or power of appointment created. (1) Except as provided in 72-2-1005 and subsections (2) and (3) of this section, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in 72-2-1002(2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this part, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

History: En. Sec. 3, Ch. 250, L. 1989; Sec. 70-1-803, MCA 1991; redes. 72-2-1003 by Code Commissioner, 1993.

72-2-1004. Reformation. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the 90 years allowed by 72-2-1002(1)(b), (2)(b), or (3)(b) if:

(1) a nonvested property interest or a power of appointment becomes invalid under 72-2-1002;

(2) a class gift is not but might become invalid under 72-2-1002 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by 72-2-1002(1)(a) can vest but not within 90 years after its creation.

History: En. Sec. 4, Ch. 250, L. 1989; Sec. 70-1-804, MCA 1991; redes. 72-2-1004 by Code Commissioner, 1993.

72-2-1005. Exclusions from statutory rule against perpetuities. Section 72-2-1002 does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of a:

(a) premarital or postmarital agreement;

(b) separation or divorce settlement;

(c) spouse's election;

(d) similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(e) contract to make or not to revoke a will or trust;

(f) contract to exercise or not to exercise a power of appointment;

(g) transfer in satisfaction of a duty of support; or

(h) reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) the power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees or independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

History: En. Sec. 5, Ch. 250, L. 1989; Sec. 70-1-805, MCA 1991; redes. 72-2-1005 by Code Commissioner, 1993.

72-2-1006. Prospective application. (1) Except as extended by subsection (2), this part applies to a nonvested property interest or a power of appointment created on or after October 1, 1989. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before October 1, 1989, and is determined in a judicial proceeding commenced on or after October 1, 1989, to violate this state's rule against perpetuities as

that rule existed before October 1, 1989, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

History: En. Sec. 6, Ch. 250, L. 1989; Sec. 70-1-806, MCA 1991; redes. 72-2-1006 by Code Commissioner, 1993.

72-2-1007. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among the states enacting it.

History: En. Sec. 7, Ch. 250, L. 1989; Sec. 70-1-807, MCA 1991; redes. 72-2-1007 by Code Commissioner, 1993.

72-2-1008 through 72-2-1016 reserved.

72-2-1017. Honorary trusts — trusts for pets. (1) Subject to subsection (3), a trust may be performed by the trustee for 21 years but no longer, whether or not the terms of the trust contemplate a longer duration if:

(a) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee; and

(b) there is no definite or definitely ascertainable beneficiary designated.

(2) Subject to the provisions of subsection (3) and this subsection, a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(iii) if no taker is produced by the application of subsection (3)(b)(i) or (3)(b)(ii), to the transferor's heirs under 72-2-721.

(c) For the purposes of 72-2-717, the residuary clause is treated as creating a future interest under the terms of a trust.

(d) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.

(e) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (3)(b).

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

History: En. Sec. 72, Ch. 494, L. 1993; amd. Sec. 23, Ch. 592, L. 1995.

Cross-References

Trusts, Title 72, ch. 33.

CHAPTER 3

UPC — PROBATE AND ADMINISTRATION

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Part 1
General Provisions

72-3-101. Devolution of estate at death — restrictions. (1) The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.

(2) Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to his heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

History: En. 91A-3-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-101.

72-3-102. Necessity of probate of will. Except as provided in 72-3-1101, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk or an adjudication of probate by the court.

History: En. 91A-3-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-102; amd. Sec. 24, Ch. 592, L. 1995.

72-3-103. Necessity of appointment for administration. Except as otherwise provided in chapter 4, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or clerk, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.

History: En. 91A-3-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-103.

72-3-104. Claims against decedent — necessity of administration. (1) No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by 72-3-101 through 72-3-1103. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in 72-3-1012 or from a former personal representative individually liable as provided in 72-3-1014.

(2) This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

History: En. 91A-3-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-104.

72-3-105. Interested persons' rights of application and petition. Persons interested in decedent's estate may apply to the clerk for determination in the informal proceedings provided in chapter 3, part 2, and may petition the court for orders in formal proceedings within the court's jurisdiction, including but not limited to those described in chapter 3, parts 3 and 4.

History: En. 91A-3-105 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-105(part).

72-3-106. Interested person's right to demand notice of order or filing. (1) Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent stating:

(a) the name of the decedent;

(b) the nature of his interest in the estate; and

(c) the demandant's address or that of his attorney.

(2) The clerk shall mail a copy of the demand to the personal representative if one has been appointed.

(3) After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in 72-1-301 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice.

(4) The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

History: En. 91A-3-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-204.

72-3-107 through 72-3-110 reserved.

72-3-111. Exclusive jurisdiction of court — binding nature of orders after notice. (1) The district court has exclusive jurisdiction of all probate matters.

(2) In proceedings within the exclusive jurisdiction of the court where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with 72-1-301. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

History: En. 91A-3-105, 91A-3-106 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-105(part), 91A-3-106.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Trusts — subject matter jurisdiction, 72-35-101.

72-3-112. Venue for estate proceedings. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had his domicile at the time of his death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon

finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

History: En. 91A-3-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-201(1) thru (3).

Cross-References

Venue, Title 25, ch. 2.

72-3-113. Rules for determining location of property. (1) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office.

(2) Commercial paper, investment paper, and other instruments are located where the instrument is.

(3) An interest in property held in trust is located where the trustee may be sued.

History: En. 91A-3-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-201(4).

Cross-References

Uniform Commercial Code — negotiable instruments, Title 30, ch. 3.

Securities regulation, Title 30, ch. 10.

Judicial proceedings concerning trusts, Title 72, ch. 35.

72-3-114. Conflicting claim as to domicile in another state. If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

History: En. 91A-3-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-202.

72-3-115 through 72-3-120 reserved.

72-3-121. Scope of proceedings when no supervised administration — proceedings independent — combination of proceedings. Unless supervised administration as described in chapter 3, part 4, is involved:

(1) each proceeding before the court or clerk is independent of any other proceeding involving the same estate;

(2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this code, no petition is defective because it fails to embrace all matters which might then be the subject of a final order.

(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

History: En. 91A-3-107 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-107.

72-3-122. Time limit on probate, testacy, and appointment proceedings — exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

(d) an informal appointment or a formal testacy or appointment proceeding may be commenced after the time period if no proceedings concerning the succession or estate administration have occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

(e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(3) In cases under subsection (1)(a) or (1)(b), the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

History: En. 91A-3-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-108; amd. Sec. 9, Ch. 582, L. 1989; amd. Sec. 25, Ch. 592, L. 1995.

72-3-123. Statutes of limitation on decedent's cause of action — applicability. No statute of limitation running on a cause of action belonging to a decedent, which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action which, but for this section, would have been barred less than 4 months after death is barred after 4 months unless tolled.

History: En. 91A-3-109 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-109.

Cross-References

Statutes of limitations, Title 27, ch. 2.

Actions involving personal property accruing after death and before issuance of letters of administration, 27-2-304.

72-3-124 through 72-3-130 reserved.

72-3-131. Compromise of controversies. (1) A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties to the proceeding, including those unborn, unascertained, or who could not be located.

(2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

History: En. 91A-3-1101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1101; amd. Sec. 27, Ch. 592, L. 1995.

72-3-132. Procedure for securing court approval of compromise. The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise must be set forth in an agreement in writing which must be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative, if any, or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of any estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise.

(4) Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

History: En. 91A-3-1102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1102; amd. Sec. 28, Ch. 592, L. 1995.

Part 2

Informal Probate and Appointment Proceedings

72-3-201. Applications to be verified. Applications for informal probate or informal appointment shall be directed to the clerk and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the information required by 72-3-202 through 72-3-205.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(part).

72-3-202. Required contents of application. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary, or successor representative, shall contain the following:

(1) a statement of the interest of the applicant;

(2) the name and date of death of the decedent, his age, and the county and state of his domicile at the time of death and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(5) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(1).

72-3-203. Probate and appointment under will — additional information required. (1) An application for informal probate of a will shall state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(b) that the applicant to the best of his knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;

(d) that the time limit for informal probate as provided in this chapter has not expired either because 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that circumstances as described by 72-3-122 authorizing tardy probate have occurred.

(2) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(2), (3).

72-3-204. Appointment in intestacy — additional information required. An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by 72-3-202:

(1) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under 72-1-201 or a statement why any such instrument of which he may be aware is not being probated;

(2) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under 72-3-501 through 72-3-508.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(4).

72-3-205. Application for appointment of successor personal representative. (1) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(2) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in 72-3-525 or whose appointment has been terminated by death or removal shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

History: En. 91A-3-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-301(5), (6).

72-3-206 through 72-3-210 reserved.

72-3-211. Informal probate — notice requirements. (1) The moving party must give notice as described by 72-1-301 of his application for informal probate:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any personal representative of the decedent whose appointment has not been terminated.

(2) No other notice of informal probate is required.

History: En. 91A-3-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-306.

72-3-212. Informal probate — clerk to make findings. In an informal proceeding for original probate of a will, the clerk shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103;

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed, and apparently unrevoked will is in the clerk's possession;

(6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and

(7) it appears from the application that the time limit for original probate has not expired.

History: **En. 91A-3-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-303(1); amd. Sec. 73, Ch. 494, L. 1993.**

72-3-213. Rules for grant or denial of informal probate. (1) A will that appears to have the required signatures and that contains an attestation clause showing that requirements of execution under 72-2-522 or 72-2-526 have been met must be probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed or may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(2) The application must be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (3), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(4) A will from a place that does not provide for probate of a will after death and that is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate that relates to one or more of a known series of testamentary instruments (other than a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, must be declined.

History: **(1) thru (4)En. 91A-3-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 516, L. 1975; Sec. 91A-3-303, R.C.M. 1947; (5)En. 91A-3-304 by Sec. 1, Ch. 365, L. 1974; Sec. 91A-3-304, R.C.M. 1947; R.C.M. 1947, 91A-3-303(2) thru (5), 91A-3-304; amd. Sec. 10, Ch. 582, L. 1989; amd. Sec. 74, Ch. 494, L. 1993.**

72-3-214. Power of clerk to deny informal probate — effect of denial. (1) If the clerk is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of 72-3-212 and 72-3-213 or any other reason, he may decline the application.

(2) A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

History: **En. 91A-3-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-305.**

72-3-215. Clerk to issue statement of informal probate — effect — procedural defect not to void probate. (1) Upon receipt of an application requesting informal probate of a will, the clerk, upon making the findings required by 72-3-212 and 72-3-213, shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death.

(2) Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding.

(3) No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

History: **En. 91A-3-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-302.**

72-3-216 through 72-3-220 reserved.

72-3-221. Informal appointment — notice requirements. (1) The moving party must give notice as described by 72-1-301 of his intention to seek an appointment informally:

(a) to any person demanding it pursuant to 72-3-106; and

(b) to any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) No other notice of an informal appointment proceeding is required.

History: En. 91A-3-310 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-310.

72-3-222. Informal appointment — clerk to make findings. In informal appointment proceedings, the clerk shall determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103;

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated, but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by 72-3-106 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling the person to the appointment.

History: En. 91A-3-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-308(1); amd. Sec. 75, Ch. 494, L. 1993.

72-3-223. Rules for denial of informal appointment. (1) Unless 72-3-523 controls, the application must be denied if it indicates:

(a) that a personal representative who has not filed a written statement of resignation as provided in 72-3-525 has been appointed in this or another county of this state;

(b) that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile; or

(c) that other requirements of 72-3-222 have not been met.

(2) If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state and which is not filed for probate in this court, the clerk shall decline the application.

History: En. 91A-3-308, 91A-3-311 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-308(2), 91A-3-311.

72-3-224. Informal appointment — power of clerk to deny — effect of denial. (1) If the clerk is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of 72-3-222, 72-3-223, and 72-3-225 or for any other reason, he may decline the application.

(2) A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

History: **En. 91A-3-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-309.**

72-3-225. Duty of clerk to make appointment — effect. (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in 72-3-701, if at least 120 hours have elapsed since the decedent's death, the clerk, after making the findings required by 72-3-222 and 72-3-223, shall appoint the applicant subject to qualification and acceptance, provided that if the decedent was a nonresident, the clerk shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that his estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment and the office of personal representative created thereby is subject to termination as provided in 72-3-521 through 72-3-526 but is not subject to retroactive vacation.

History: **En. 91A-3-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-307.**

Part 3

Formal Testacy and Appointment Proceedings

72-3-301. Petition for formal testacy or appointment — contents — last will. (1) Petitions for formal probate of a will or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

(a) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(b) contains the statements required for informal applications as stated in the five subsections under 72-3-202, the statements required by subsections (b) and (c) of 72-3-203(1); and

(c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by 72-3-202 and 72-3-204, and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by 72-3-204(2) may be omitted.

History: **En. 91A-3-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-402.**

72-3-302. Formal testacy proceedings — nature — how and when commenced. (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will.

(2) A formal testacy proceeding may be commenced by an interested person filing a petition:

(a) as described in 72-3-301(1) in which he requests that the court, after notice and hearing, enter an order probating a will;

(b) to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application; or

(c) for an order that the decedent died intestate.

(3) A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated.

(4) A formal testacy proceeding may but need not involve a request for appointment of a personal representative.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).

Cross-References

Undue influence, 28-2-407.

72-3-303. Formal proceeding supersedes all informal applications. During the pendency of a formal testacy proceeding, the clerk shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).

72-3-304. Effect of formal proceeding on power of informally appointed personal representative. Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

History: En. 91A-3-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-401(part).

72-3-305. Notice of hearing on petition for formal testacy proceeding. (1) Upon commencement of a formal testacy proceeding, the court or clerk shall fix a time and place of hearing.

(2) Notice shall be given in the manner prescribed by 72-1-301 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under 72-3-106 of this code. Notice shall be given to the following persons:

(a) the surviving spouse, children, and other heirs of the decedent;

(b) the devisees and executors named in any will that is being or has been probated or offered for informal or formal probate in the county or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere; and

(c) any personal representative of the decedent whose appointment has not been terminated.

(3) In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(4) Notice may be given to other persons.

History: En. 91A-3-403 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 3, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-403(1).

72-3-306. Notice and procedure when fact of death in doubt. (1) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered or certified mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of or make and report back concerning a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(a) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) by engaging the services of an investigator.

(2) The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

History: En. 91A-3-403 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 3, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-403(2).

72-3-307. Hearings and proof in uncontested cases. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of 72-3-313 and 72-3-316 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

History: En. 91A-3-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-405.

72-3-308. Written objections to probate. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

History: En. 91A-3-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-404.

72-3-309. Testimony of attesting witnesses in contested cases — presumptions for self-proved will. (1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state and competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal, without the testimony of any witness, upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

History: En. 91A-3-406 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-406; amd. Sec. 2, Ch. 6, L. 1979.

72-3-310. Burdens in contested cases. In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof.

History: En. 91A-3-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-407(part).

Cross-References

Duress, 28-2-402.

Kinds of fraud, 28-2-404 through 28-2-406.

Undue influence, 28-2-407.

Kinds of mistake, 28-2-408 through 28-2-411.

72-3-311. Priority of determinations in contested cases. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

History: En. 91A-3-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-407(part).

72-3-312. Effect of final order in another state. A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes or is based upon a finding that the decedent was domiciled at his death in the state where the order was made.

History: En. 91A-3-408 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-408.

72-3-313. Order for formal probate. (1) After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by 72-3-122, it shall determine the decedent's domicile at death, his heirs, and his state of testacy. Any will found to be valid and unrevoked shall be formally probated.

(2) Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by 72-3-523.

(3) The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead.

History: **En. 91A-3-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-409(part).**

72-3-314. Probate of more than one instrument — order. (1) If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication.

(2) If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may but need not indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of 72-3-317.

History: **En. 91A-3-410 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-410.**

72-3-315. Order of partial intestacy. If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

History: **En. 91A-3-411 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-411.**

72-3-316. Will from place where probate unprovided for. A will from a place which does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

History: **En. 91A-3-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-409(part).**

72-3-317. Effect of formal testacy order — modification or vacation — fact of death — remedies of alleged decedent. Subject to appeal and subject to vacation as provided in 72-3-318 and this section, a formal testacy order under 72-3-313 through 72-3-316, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will:

(a) were unaware of its existence at the time of the earlier proceeding; or

(b) were unaware of the earlier proceeding and were given no notice of the proceeding, except by publication;

(2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons:

(a) were unaware of their relationship to the decedent;

(b) were unaware of the decedent's death; or

(c) were given no notice of any proceeding concerning the decedent's estate, except by publication;

(3) a petition for vacation under either subsection (1) or (2) above must be filed prior to the earlier of the following time limits:

(a) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement;

(b) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by 72-3-122 when it is no longer possible to initiate an original proceeding to probate a will of the decedent;

(c) 12 months after the entry of the order sought to be vacated;

(4) the order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs;

(5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at the last known address and the court finds that a search under 72-3-306 was made. If the alleged decedent is not dead, even if notice was sent and search was made, the alleged decedent may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

History: En. 91A-3-412 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-412; amd. Sec. 26, Ch. 592, L. 1995.

72-3-318. Modification or vacation for other cause. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

History: En. 91A-3-413 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-413.

72-3-319. Formal appointment proceedings. (1) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by 72-3-301 as well as by this section. In other cases, the petition shall contain or adopt the statements required by 72-3-202 and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative, and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under 72-3-501

through 72-3-508, make a proper appointment, and if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under 72-3-526.

History: **En. 91A-3-414 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-414.**

Part 4

Supervised Administration

72-3-401. Supervised administration — nature and purpose. Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.

History: **En. 91A-3-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-501(part).**

72-3-402. Petition and order. (1) A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied.

(2) After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(a) if the decedent's will directs supervised administration, unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(b) only upon a finding that it is necessary for protection of persons interested in the estate if the decedent's will directs unsupervised administration; or

(c) in other cases if the court finds that supervised administration is necessary under the circumstances.

History: **En. 91A-3-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-502.**

72-3-403. Effect on other proceedings and previously appointed personal representative. (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by 72-3-303 and 72-3-304.

(3) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously

shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

History: **En. 91A-3-503 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-503.**

72-3-404. Powers and duties of personal representative. (1) A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party.

(2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

(3) Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative.

History: **En. 91A-3-501, 91A-3-504 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-501(part), 91A-3-504.**

72-3-405. Interim orders. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

History: **En. 91A-3-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-505(part).**

72-3-406. Closing orders. Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under 72-3-1001 and 72-3-1002.

History: **En. 91A-3-505 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-505(part).**

Part 5

Personal Representative Appointment Priorities, Bond, and Termination

72-3-501. Who may not be personal representative. No person is qualified to serve as a personal representative who is:

(1) under the age of 18;

(2) a person whom the court finds unsuitable in formal proceedings.

History: **En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(6).**

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

72-3-502. Priorities for appointment. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;
(2) the surviving spouse of the decedent who is a devisee of the decedent;
(3) the custodial parent of a minor decedent;
(4) other devisees of the decedent;
(5) the surviving spouse of the decedent;
(6) other heirs of the decedent;
(7) public administrator;
(8) 45 days after the death of the decedent, any creditor.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(1); amd. Sec. 1, Ch. 219, L. 1989.

72-3-503. Objection to appointment. (1) An objection to an appointment can be made only in formal proceedings.

(2) In case of objection the priorities stated in 72-3-502 apply, except that:

(a) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(b) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(2).

72-3-504. Renunciation — nomination of other — two or more persons sharing priority. (1) A person entitled to letters under (2) through (6) of 72-3-502 may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce his right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(3).

72-3-505. Rights of conservators relating to appointment. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(4).

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

72-3-506. Priority of domiciliary personal representative. A personal representative appointed by a court of the decedent's domicile has priority over all other persons, except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(7).

72-3-507. Appointment of one not having priority. Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to 72-3-504, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(5).

72-3-508. Application of priority provisions to appointment of successor. Sections 72-3-501 through 72-3-507 govern priority for appointment of a successor personal representative but do not apply to the selection of a special administrator.

History: En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(8).

72-3-509 and 72-3-510 reserved.

72-3-511. Acceptance of appointment — consent to jurisdiction. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative or mailed to him by ordinary first-class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

History: En. 91A-3-602 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-602.

72-3-512. Qualification — filing of bond and statement of acceptance. Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

History: En. 91A-3-601 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-601.

Cross-References

Documents requiring seals, 3-1-206.

Authority of agent, Title 28, ch. 10, part 4.

72-3-513. Bond — when required. (1) No bond is required of a personal representative appointed in informal proceedings, except:

(a) upon the appointment of a special administrator;

(b) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(c) when bond is required under 72-3-514.

(2) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary.

(3) No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

History: En. 91A-3-603 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-603.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-514. Demand for bond by interested person. (1) Any person apparently having an interest in the estate worth in excess of $1,000 or any creditor having a claim in excess of $1,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in 72-3-513 or 72-3-515.

(2) After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate.

(3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative.

History: En. 91A-3-605 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-605.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-515. Bond amount — security — reduction. (1) If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the clerk indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the clerk or give other suitable security in an amount not less than the estimate.

(2) The clerk shall determine that the bond is duly executed by a corporate surety or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security.

(3) The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution in a manner that prevents their unauthorized disposition. On petition of the

personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

History: En. 91A-3-604 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-604.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-516. Terms of bond — liability of surety. (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds shall name the state as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: En. 91A-3-606 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-606.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

72-3-517 through 72-3-520 reserved.

72-3-521. Termination of appointment — general effect. Termination of appointment of a personal representative occurs as indicated in 72-3-522 through 72-3-526, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative but terminates his authority to represent the estate in any pending or future proceeding.

History: **En. 91A-3-608 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-608.**

72-3-522. Termination of appointment — death or disability. (1) The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates his appointment.

(2) Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

History: **En. 91A-3-609 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-609.**

72-3-523. Termination of appointment — change of testacy status. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder does not terminate the appointment of the personal representative although his powers may be reduced as provided in 72-3-304. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings or from the informal probate changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will or as in intestacy, as the case may be.

History: **En. 91A-3-612 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-612.**

72-3-524. Termination of appointment — closing of estate. (1) An appointment of a personal representative terminates, as provided in 72-3-1004, 1 year after the filing of a closing statement.

(2) An order closing an estate as provided in 72-3-1001, 72-3-1002, or 72-3-1003 terminates an appointment of a personal representative.

History: **En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(1), (2).**

72-3-525. Termination of appointment — voluntary. A personal representative may resign his position by filing a written statement of resignation with the clerk after he has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

History: **En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(3).**

72-3-526. Termination of appointment — removal for cause. (1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in 72-3-617, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of or under the control of the personal representative being removed.

(2) Cause for removal exists:

(a) when removal would be in the best interests of the estate; or

(b) if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

History: En. 91A-3-611 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-611.

72-3-527. Successor personal representative. (1) Parts 2 and 3 of this chapter govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated.

(2) After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative.

(3) Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

History: En. 91A-3-613 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-613.

Part 6

Personal Representative Powers, Duties, and Compensation

72-3-601. Time of accrual of duties and powers — power of executor prior to appointment — ratification. (1) The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.

(2) Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements.

(3) A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

History: **En. 91A-3-701 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-701.**

72-3-602. Priority among different letters. A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

History: **En. 91A-3-702 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-702.**

72-3-603. Notice of appointment to heirs and devisees. (1) Not later than 30 days after his appointment, every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) (a) The information must:

(i) include the name and address of the personal representative;

(ii) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(iii) indicate whether bond has been filed; and

(iv) describe the court where papers relating to the estate are on file.

(b) The information must state that the estate is being administered by the personal representative under the uniform probate code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

(3) The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties.

(4) A personal representative may inform other persons of his appointment by delivery or ordinary first-class mail.

History: **En. 91A-3-705 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-705; amd. Sec. 11, Ch. 582, L. 1989.**

72-3-604. Standing to sue. Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

History: **En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(3).**

Cross-References

Parties plaintiff and defendant — capacity, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

72-3-605. Personal representative to proceed without court order — power to invoke jurisdiction. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

History: **En. 91A-3-704 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-704.**

72-3-606. Possession and protection of estate. (1) Except as otherwise provided by a decedent's will and subject to the provisions of chapter 12, part 7, every personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration.

(2) The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection, and preservation of the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

History: **En. 91A-3-708 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-708.**

Cross-References

Disposition of property of deceased — suicide note, 7-4-2917.

Estate tax, Title 72, ch. 16, part 9.

72-3-607. Inventory — appraisal — copy to department of revenue. (1) Within the time required for the filing of a United States estate tax return plus any extensions granted by the internal revenue service, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which:

(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death;

(b) the decedent had possessory or dispository rights over at the time of his death or had disposed of for less than its fair market value within 3 years of his death; or

(c) was affected by the decedent's death for the purpose of inheritance or estate taxes.

(2) The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal representative shall appoint one or more qualified and disinterested persons to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

(3) The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue.

History: En. 91A-3-706 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 4, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-706; amd. Sec. 12, Ch. 582, L. 1989.

72-3-608. Repealed. Sec. 18, Ch. 52, L. 1981.

History: En. 91A-3-715.1 by Sec. 6, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-715.1.

72-3-609. Supplementary inventory — copy to department of revenue. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed or furnish copies thereof or information thereof to persons interested in the new information and in any case shall mail a copy of it to the department of revenue.

History: En. 91A-3-707 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-707.

72-3-610. General duties — fiduciary. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(1).

Cross-References

Trust Code, Title 72, ch. 33 through 36.

72-3-611. No surcharge for authorized acts generally — limitation. (1) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding.

(2) Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.

History: En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(2).

72-3-612. No individual liability — exceptions — certain claims to be brought against personal representative. (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

History: En. 91A-3-808 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-808.

72-3-613. Transactions authorized for personal representative. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, he may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court, effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; provided, however, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate he represents, nor may he be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;

(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(c) throughout the period of administration, if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims and distribute the estate as provided in this code.

History: En. 91A-3-713 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-713; amd. Sec. 1, Ch. 145, L. 1989.

72-3-614. Power to recover property which is subject of void or voidable transfer. The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

History: En. 91A-3-709 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-709.

Cross-References

Liens, Title 71, ch. 3.

72-3-615. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to the personal representative, his spouse, agent, or attorney or any corporation or trust in which he has a substantial beneficial interest or any transaction which is affected by a substantial conflict of interest on the part of the personal representative is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.

History: En. 91A-3-711 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-711.

72-3-616. Improper exercise of power — breach of fiduciary duty. (1) If any exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust.

(2) The rights of purchasers and others dealing with a personal representative shall be determined as provided in 72-3-615 and 72-3-618.

History: En. 91A-3-710 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-710.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

72-3-617. Order restraining personal representative. (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution or exercise of any powers or discharge of any duties of his office or make any other order to secure proper performance of his duty if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

History: En. 91A-3-607 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-607.

Cross-References

Parties plaintiff and defendant — capacity, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

72-3-618. Persons dealing with personal representative — protection. (1) A person who in good faith and without notice either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in 72-3-404(3), no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof.

(2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

(3) The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries, nor does it in any way limit the provisions of 72-16-432 and 72-16-433.

History: **En. 91A-3-712 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-712.**

72-3-619 and 72-3-620 reserved.

72-3-621. Powers and duties of successor personal representative. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

History: **En. 91A-3-716 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-716.**

72-3-622. Corepresentatives — when joint action required. If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply:

(1) when any corepresentative receives and receipts for property due the estate;

(2) when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate; or

(3) when a corepresentative has been delegated to act for the others.

History: **En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part).**

72-3-623. Persons dealing with single corepresentative — protection. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

History: **En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part).**

72-3-624. Powers of remaining corepresentative. Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

History: En. 91A-3-718 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-718.

72-3-625 through 72-3-630 reserved.

72-3-631. Compensation of personal representative. (1) A personal representative is entitled to reasonable compensation for his services. Such compensation shall not exceed 3% of the first $40,000 of the value of the estate as reported for federal estate tax or state inheritance tax purposes, whichever is larger, and 2% of the value of the estate in excess of $40,000 as reported for federal estate tax or state inheritance tax purposes, whichever is larger. However, a personal representative is entitled to a minimum compensation of the lesser of $100 or the value of the gross estate.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative shall not exceed 2% of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative shall not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation shall not exceed 2% of the value of the estate, except that it shall not be less than $100.

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. Such additional compensation shall not be greater than the amount which is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

History: En. 91A-3-719 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-719; amd. Sec. 1, Ch. 424, L. 1979.

Cross-References

Compensation of Public Administrator, 72-15-301.

Inheritance and estate taxes, Title 72, ch. 16.

72-3-632. Expenses of personal representative in estate litigation. If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements, including reasonable attorneys' fees incurred.

History: En. 91A-3-721 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-721.

72-3-633. Compensation of attorney. (1) If the services of an attorney are engaged by the personal representative, the compensation of such attorney shall not exceed 1 1/2 times the compensation allowable to the personal representative.

(2) If the services of an attorney are engaged by the personal representative to assist in the termination of joint tenancies, the compensation allowed the attorney shall not exceed 3% of the interest passing.

(3) If the services of an attorney are engaged in connection with the termination of a life estate, the compensation allowed the attorney shall not exceed 3% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the attorney's compensation shall not exceed 3%, except that it shall not be less than $100.

(4) If the services of more than one attorney are engaged, only one compensation shall be allowed.

(5) In cases where further compensation may be allowed to an attorney, the same must be fixed and determined by the court upon good cause shown after notice and hearing of an application therefor.

History: En. 91A-3-720 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-720.

72-3-634. Proceedings for review of employment of agents and compensation of personal representatives and employees. (1) Upon the filing of a motion for settlement of fees by the court filed by an interested person, the personal representative, or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services shall be reviewed and determined by the court.

(2) In any dispute concerning fees, the court shall set the fee.

(3) Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

History: En. 91A-3-722 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-722.

Part 7

Special Administrator

72-3-701. Special administrator — how and when appointed. A special administrator may be appointed:

(1) informally by the clerk on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in 72-3-522;

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

History: En. 91A-3-614 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-614.

72-3-702. Special administrator — who may be appointed. (1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(2) In other cases, any proper person may be appointed special administrator.

History: En. 91A-3-615 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-615.

72-3-703. Special administrator appointed informally — powers and duties. A special administrator appointed by the clerk in informal proceedings pursuant to 72-3-701(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.

History: En. 91A-3-616 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-616.

72-3-704. Special administrator — formal proceedings — power and duties. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative, except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.

History: En. 91A-3-617 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-617.

72-3-705. Special administrator — termination of appointment. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in 72-3-521 through 72-3-526.

History: En. 91A-3-618 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-618.

Part 8

Creditors' Claims

72-3-801. Notice to creditors. (1) Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred.

(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within 4 months from the published notice if given as provided in subsection (1) or within 30 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (1) or a similar notice.

(3) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.

History: En. 91A-3-801 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-801; amd. Sec. 1, Ch. 500, L. 1989.

72-3-802. Statutes of limitations — waiver — suspension. (1) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

(2) The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow.

(3) For purposes of any statute of limitations, the proper presentation of a claim under 72-3-804 is equivalent to commencement of a proceeding on the claim.

History: En. 91A-3-802 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-802; amd. Sec. 2, Ch. 500, L. 1989.

Cross-References

Statutes of limitations, Title 27, ch. 2.

72-3-803. Nonclaim — limitations on presentation of claims — exceptions. (1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following time limitations:

(a) within 1 year after the decedent's death; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication. However, claims barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.

(2) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the later of 4 months after it arises or the time specified in subsection (1)(a).

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

History: **En. 91A-3-803 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 352, L. 1975; R.C.M. 1947, 91A-3-803; amd. Sec. 3, Ch. 6, L. 1979; amd. Sec. 3, Ch. 500, L. 1989.**

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Mortgages, Pledges, and Liens, Title 71.

Inheritance and estate taxes, Title 72, ch. 16.

72-3-804. Manner of presentation of claims. Claims against a decedent's estate may be presented as follows:

(1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative, in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance, but in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event shall the extension run beyond the applicable statute of limitations.

History: **En. 91A-3-804 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-804.**

72-3-805. Allowance and disallowance of claims — interest on allowed claims. (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(2) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this section. The personal representative may change the allowance to a disallowance, in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(3) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1). Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(4) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(5) Unless otherwise provided in any judgment in another court entered against the personal representative, an allowed claim bears interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case the claim bears interest in accordance with that provision.

History: En. 91A-3-806 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 7, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-806; amd. Sec. 13, Ch. 582, L. 1989.

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

72-3-806. Counterclaims — deduction. (1) In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.

(2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

History: En. 91A-3-811 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-811.

72-3-807. Classification of claims as to priority of payment. (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) costs and expenses of administration;

(b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

(c) federal estate and Montana state estate and inheritance taxes;

(d) debt for a current support obligation and past-due support for decedent's children pursuant to a support order as defined in 40-5-201;

(e) debts with preference under federal and Montana law;

(f) other federal and Montana state taxes;

(g) all other claims.

(2) A preference may not be given in the payment of any claim over any other claim of the same class, and a claim due and payable may not be entitled to a preference over claims not due.

History: En. 91A-3-805 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 2, Ch. 352, L. 1975; R.C.M. 1947, 91A-3-805; amd. Sec. 18, Ch. 482, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 482 inserted (1)(d) requiring representative, when estate assets are insufficient to pay all claims, to pay decedent's current and past-due child support obligation pursuant to court order; and made minor changes in style. Amendment effective May 2, 1997.

Cross-References

Wages — preferred debts, 71-3-302.

72-3-808. Payment of claims. (1) Upon the expiration of the earlier of the time limitations provided in 72-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

History: En. 91A-3-807 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-807; amd. Sec. 4, Ch. 500, L. 1989.

72-3-809 and 72-3-810 reserved.

72-3-811. Secured claims. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(1) if the creditor exhausts his security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

History: **En. 91A-3-809 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-809.**

72-3-812. Encumbered assets. (1) If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate.

(2) Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

History: **En. 91A-3-814 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-814.**

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Mortgages, Pledges, and Liens, Title 71.

72-3-813. Execution and levies prohibited. No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

History: **En. 91A-3-812 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-812.**

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Mortgages, Pledges, and Liens, Title 71.

72-3-814. Claims not due and contingent or unliquidated claims. (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account.

(b) Arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

History: En. 91A-3-810 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-810.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
Mortgages, Title 71, ch. 1.
Trust Code, Title 72, ch. 33 through 36.

72-3-815. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative with the consent of the heirs or devisees or the court may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

History: En. 91A-3-813 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-813.

72-3-816 through 72-3-820 reserved.

72-3-821. Administration in more than one state — payment of claims. (1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

History: En. 91A-3-815 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-815.

72-3-822. Distribution to domiciliary personal representative — exceptions. (1) The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

(a) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

(b) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

(c) the court orders otherwise in a proceeding for a closing order under 72-3-1001 or incident to the closing of a supervised administration.

(2) In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this chapter.

History: **En. 91A-3-816 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-816.**

Part 9

Special Provisions Relating to Distribution

72-3-901. Abatement. (1) Except as provided in subsection (3) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

(a) property not disposed of by the will;

(b) residuary devises;

(c) general devises;

(d) specific devises.

(2) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged and, upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(3) If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in or contribution from other interests in the remaining assets.

History: **En. 91A-3-902 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-902.**

72-3-902. Distribution in kind preferred — method — valuation. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in 72-2-413 shall receive the items selected.

(2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind, provided:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), any security regularly traded on a recognized exchange, if distributed in kind, is valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and asked at the close of that day. An asset consisting of a sum owed the decedent or the estate by a solvent debtor as to which there is no known dispute or defense is valued at the sum due with accrued interest or discounted to the date of distribution. For an asset which has no readily ascertainable value, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of any asset as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the asset may have been previously appraised.

(4) The residuary estate shall be distributed in any equitable manner.

History: En. 91A-3-906 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-906(1); amd. Sec. 14, Ch. 582, L. 1989.

Cross-References

Homestead allowance, 72-2-412.

Family allowance, 72-2-414.

72-3-903. Proposal for distribution — delivery — objection. (1) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution.

(2) The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

History: En. 91A-3-906 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-906(2).

72-3-904. Distribution in kind — evidence of title. If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

History: En. 91A-3-907 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-907.

72-3-905. Distribution by personal representative conclusive evidence of succession to interest by distributee. Proof that a distributee has received an instrument or deed of distribution of assets in kind or payment in distribution from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

History: En. 91A-3-908 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-908.

72-3-906. Improper distribution or payment — liability of distributee or payee. Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid or a claimant who was improperly paid is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

History: **En. 91A-3-909 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-909.**

72-3-907. Purchases from distributees protected. (1) If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed.

(2) This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section shall be prima facie evidence that such transfer was made for value.

(3) For purposes of this section, the term purchaser includes any lessee or other person acquiring any interest in the property for value.

History: **En. 91A-3-910 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-910; amd. Sec. 9, Ch. 52, L. 1981.**

72-3-908 through 72-3-910 reserved.

72-3-911. Successors' rights if no administration. (1) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

(2) Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption, or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

History: **En. 91A-3-901 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-901.**

Cross-References

Intestate succession, Title 72, ch. 2, part 1.
Homestead allowance, 72-2-412.
Exempt property, 72-2-413.

72-3-912. Successor's indebtedness to estate offset against interest — defenses available. The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

History: **En. 91A-3-903 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-903.**

72-3-913. Interest on general pecuniary devise. General pecuniary devises bear interest at the legal rate beginning 1 year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

History: En. 91A-3-904 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-904.

Cross-References

Legal interest, 31-1-106.

72-3-914. Partition for purpose of distribution. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court, prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

History: En. 91A-3-911 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-911.

72-3-915. Private agreements among successors as to distribution — testamentary trustee as successor. (1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties.

(2) Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

History: En. 91A-3-912 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-912.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

72-3-916. Distribution to trustee — registration — bond. (1) Before distributing to a trustee, the personal representative may require that the trust be registered, if the state in which it is to be administered provides for registration, and that the trustee inform in writing the current beneficiaries and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of his name and address and provide each with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2).

History: **En. 91A-3-913 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-913; amd. Sec. 4, Ch. 6, L. 1979.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-3-917. Distribution to person under disability. (1) A personal representative may discharge his obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge his obligation to distribute to a minor or person under other disability as authorized by 72-5-501 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of that person, but may not pay himself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3).

History: **En. 91A-3-915 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-915; amd. Sec. 15, Ch. 582, L. 1989.**

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

72-3-918. Disposition of unclaimed assets — escheat. (1) If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, otherwise to the department of revenue to be deposited in the state escheat fund as provided in chapter 14, as amended.

(2) Any person having any claim to a share deposited in the state escheat fund under the provisions of this code shall follow the procedures set out in chapter 14, concerning escheated estates, to claim such share.

History: **En. 91A-3-914 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-914.**

Part 10
Closing Estates

72-3-1001. Formal proceedings terminating administration — testate or intestate — order of complete settlement. (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after 1 year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired.

(2) The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs, and to adjudicate the final settlement and distribution of the estate.

(3) After notice to all interested persons and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

History: En. 91A-3-1001 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1001(1).

72-3-1002. Order of complete settlement as to persons previously omitted or unnotified in previous formal testacy proceeding. If one or more heirs or devisees were omitted as parties in or were not given notice of a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under 72-3-1001 and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

History: En. 91A-3-1001 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1001(2).

72-3-1003. Formal proceedings terminating administration under informally probated will — settlement order construing will without adjudicating testacy. (1) A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time and a devisee may petition after 1 year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired.

(2) The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will, and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of 72-3-1001 and 72-3-1002.

History: En. 91A-3-1002 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1002.

72-3-1004. Closing estate by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has:

(a) determined that the time limitation for presentation of creditors' claims has expired;

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration, and estate, inheritance, and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees, or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities;

(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby; and

(d) complied with the provisions of 72-3-1006.

(2) If no proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

History: En. 91A-3-1003 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1003; amd. Sec. 5, Ch. 500, L. 1989.

Cross-References

Notice to creditors, 72-3-801.

Inheritance and estate taxes, Title 72, ch. 16.

72-3-1005. Final accounting required to close estate. (1) Before an estate may be finally closed and the personal representative relieved of his duties and obligations, he shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants and all other matters necessary to show the state of its affairs.

(2) Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings.

(3) If the personal representative is the sole residual beneficiary of the estate, no accounting need be made.

History: En. 91A-3-1012 by Sec. 5, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-1012; amd. Sec. 10, Ch. 52, L. 1981.

72-3-1006. Certificate or receipt showing taxes paid required to close estate. (1) In all probate proceedings under this code, before final distribution to successors is made and before any petition is granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, there shall have been filed with the clerk:

(a) a certificate from the department of revenue stating that any inheritance tax due on the assets of the estate has been paid; or

(b) an agreement with the department of revenue for extension of time for payment of inheritance taxes; or

(c) a receipt from the county treasurer stating that any inheritance tax due on the assets of the estate has been paid.

(2) This section shall not prohibit such partial distribution as may become necessary in the course of administration.

History: En. 91A-3-1004 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 99, L. 1975; R.C.M. 1947, 91A-3-1004; amd. Sec. 11, Ch. 52, L. 1981.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

72-3-1007 through 72-3-1010 reserved.

72-3-1011. Limitation on actions against personal representative. Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within 6 months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

History: En. 91A-3-1006 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1006.

Cross-References

Kinds of fraud, 28-2-404 through 28-2-406.

Remedies for fraud — statute of limitations, 72-1-111.

72-3-1012. Liability of distributees to claimants. (1) After assets of an estate have been distributed and subject to 72-3-1013, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution.

(2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other

distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

History: **En. 91A-3-1005 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1005.**

72-3-1013. Limitation on actions against distributees. (1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim and the right of any heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of 3 years after the decedent's death or 1 year after the time of distribution thereof.

(2) This section does not bar an action to recover property or value received as the result of fraud.

History: **En. 91A-3-1007 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1007.**

Cross-References

Kinds of fraud, 28-2-404 through 28-2-406.

Remedies for fraud — statute of limitations, 72-1-111.

72-3-1014. Certificate discharging liens securing fiduciary performance. After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing so far as is known by the applicant that no action concerning the estate is pending in any court, is entitled to receive a certificate from the clerk that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety but does not preclude action against the personal representative or the surety.

History: **En. 91A-3-1008 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1008.**

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

72-3-1015. Estate to be closed within two years. (1) If an estate has not been closed within 2 years from the date of appointment of the personal representative, the supreme court administrator shall notify the district judge thereof. The judge shall order the personal representative and his attorney to appear before the court and show cause why the estate has not been closed.

(2) If, after the show cause hearing, the judge determines that good cause does not exist for failure to close the estate, the judge may make an order directing that the estate be closed within 30 days and that the personal representative and his attorney receive no fee or other compensation from the estate.

History: **En. 91A-3-1011 by Sec. 1, Ch. 191, L. 1975; R.C.M. 1947, 91A-3-1011; amd. Sec. 5, Ch. 104, L. 1981.**

72-3-1016. Subsequent administration upon discovery of other property. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after 1 year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

History: En. 91A-3-1009 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1009.

Part 11

Collection of Personal Property by Affidavit and Summary Administration Procedure for Small Estates

72-3-1101. Collection of personal property by affidavit. (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed $7,500;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1).

History: En. 91A-3-1201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1201; amd. Sec. 1, Ch. 124, L. 1981.

72-3-1102. Effect of affidavit. (1) The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit.

(2) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto.

(3) Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any person representative of the estate or to any other person having a superior right.

History: En. 91A-3-1202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1202.

72-3-1103. Small estates — summary administration procedure. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to the creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104.

History: En. 91A-3-1203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1203; amd. Sec. 2, Ch. 124, L. 1981; amd. Sec. 16, Ch. 582, L. 1989.

Cross-References

Exempt property and allowances, Title 72, ch. 2, part 4.

72-3-1104. Small estates — closing by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004.

History: En. 91A-3-1204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-1204; amd. Sec. 3, Ch. 124, L. 1981; amd. Sec. 17, Ch. 582, L. 1989.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Exempt property and allowances, Title 72, ch. 2, part 4.

Inheritance and estate taxes, Title 72, ch. 16.

CHAPTER 4

UPC — FOREIGN PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATION

Part 1 — General Provisions

72-4-101. Definitions.

Part 2 — Jurisdiction Over Foreign Personal Representatives

72-4-201. Jurisdiction by act of foreign personal representative.
72-4-202. Jurisdiction by act of decedent.
72-4-203. Service on foreign personal representative.

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72-4-301. Renumbered 72-4-310.
72-4-302. Renumbered 72-4-311.
72-4-303. Filing of letters, bond, inventory, and affidavit — copy to department of revenue.
72-4-304. Determination of inheritance tax — certificate of department of revenue showing tax paid, waived, or bond posted.
72-4-305. Right to inspect estate assets for inventory.
72-4-306. Payment of debt and delivery of property to foreign representative.
72-4-307. Payment or delivery discharges debtor or possessor.
72-4-308. Payment or delivery to foreign representative prohibited by resident creditor notice.
72-4-309. Proof of authority — bond.
72-4-310. Powers of foreign representative generally.
72-4-311. Effect of local administration on foreign representative, third persons, and local representative.

Part 4 — Ancillary Administration

72-4-401. Ancillary administration — provisions governing.
72-4-402. Adjudication in other jurisdiction binding on local representative.

Part 1
General Provisions

72-4-101. Definitions. In this chapter, the following definitions apply:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in chapter 3.

(2) "Local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in chapter 3 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to 72-4-310.

(3) "Resident creditor" means a person domiciled in or doing business in this state who is or could be a claimant against an estate of a nonresident decedent.

History: En. 91A-4-101 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-101.

Part 2
Jurisdiction Over Foreign Personal Representatives

72-4-201. Jurisdiction by act of foreign personal representative. (1) A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

(a) filing authenticated copies of his appointment as provided in 72-4-309;

(b) receiving payment of money or taking delivery of personal property under 72-4-306; or

(c) doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual.

(2) Jurisdiction under subsection (1)(b) is limited to the money or value of personal property collected.

History: En. 91A-4-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-301; amd. Sec. 12, Ch. 52, L. 1981.

72-4-202. Jurisdiction by act of decedent. In addition to jurisdiction conferred by 72-4-201, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

History: En. 91A-4-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-302.

72-4-203. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by registered or certified mail addressed to his last reasonably ascertainable address requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), he shall be allowed at least 30 days within which to appear or respond.

History: En. 91A-4-303 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-303.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Part 3
Powers and Duties of Foreign Personal Representative

72-4-301. Renumbered 72-4-310. Sec. 17, Ch. 52, L. 1981.

72-4-302. Renumbered 72-4-311. Sec. 17, Ch. 52, L. 1981.

72-4-303. Filing of letters, bond, inventory, and affidavit — copy to department of revenue. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-310, shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located authenticated copies of his appointment and of any official bond he has given, an inventory and appraisal of the property of the nonresident decedent located in this state, which inventory shall contain the information prescribed in 72-3-607, and an affidavit stating:

(a) the date of death of the nonresident decedent; and

(b) that no local administration or application or petition therefor is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying him as having registered with the district court and stating the name and date of death of the decedent.

(3) The clerk shall also immediately forward a copy of the appointment, affidavit, and inventory and appraisal required by subsection (1) to the department of revenue.

History: En. 91A-4-201 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-201.

Cross-References

District Court Clerk fees, 25-1-201.

Suretyship, Title 28, ch. 11, part 4.

Inheritance and estate taxes, Title 72, ch. 16.

72-4-304. Determination of inheritance tax — certificate of department of revenue showing tax paid, waived, or bond posted. (1) The department of revenue shall determine what inheritance tax, if any, is owing on the property of the nonresident decedent located in this state and shall send notice of the tax owing to the domiciliary foreign personal representative and to the clerk of court.

(2) Upon payment of the inheritance tax due or if no tax is owing, the department of revenue shall issue a certificate to the domiciliary foreign personal representative indicating that inheritance taxes either are not owing or have been paid and shall send a copy of the certificate to the clerk of court.

(3) The department may issue an order waiving inheritance taxes on a particular item of property under such terms and circumstances as the department shall determine.

(4) Upon the posting by the domiciliary foreign personal representative of satisfactory bond, the department may issue a certificate indicating that bond has been posted sufficient to secure any inheritance tax due on the in-state property of the nonresident decedent. This certificate may be issued at any time after the filing of the inventory with the clerk of court.

History: En. 91A-4-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-202.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

72-4-305. Right to inspect estate assets for inventory. Any person holding any property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock, or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect and appraise the property for purposes of completing the inventory and appraisal called for in 72-4-303(1) upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of death of the nonresident decedent;

(2) that no local administration or application or petition therefor is pending in this state; and

(3) that the domiciliary foreign personal representative is entitled to make such inspection and appraisal.

History: En. 91A-4-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-203.

72-4-306. Payment of debt and delivery of property to foreign representative. At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative, stating:

(1) the date of the death of the nonresident decedent;

(2) that no local administration, or application or petition therefor, is pending in this state;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

History: En. 91A-4-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-204; amd. Sec. 14, Ch. 52, L. 1981.

72-4-307. Payment or delivery discharges debtor or possessor. Payment or delivery made in good faith on the basis of the certificate of the clerk of court and the certificate of the department of revenue releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

History: En. 91A-4-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-205.

72-4-308. Payment or delivery to foreign representative prohibited by resident creditor notice. Payment or delivery under 72-4-306 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid or the property delivered to the domiciliary foreign personal representative.

History: En. 91A-4-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-206; amd. Sec. 15, Ch. 52, L. 1981.

72-4-309. Proof of authority — bond. If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

History: En. Sec. 16, Ch. 52, L. 1981.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-4-310. Powers of foreign representative generally. A domiciliary foreign personal representative who has complied with 72-4-309 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state, subject to any conditions imposed upon nonresident parties generally.

History: En. 91A-4-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-207; amd. Sec. 13, Ch. 52, L. 1981; MCA 1979, 72-4-301; redes. 72-4-310 by Sec. 17, Ch. 52, L. 1981.

72-4-311. Effect of local administration on foreign representative, third persons, and local representative. (1) The power of a domiciliary foreign personal representative under 72-4-306 or 72-4-310 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under 72-4-310, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate.

(2) No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for or grant of local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

History: En. 91A-4-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-208; MCA 1979, 72-4-302; redes. 72-4-311 by Sec. 17, Ch. 52, L. 1981.

Part 4

Ancillary Administration

72-4-401. Ancillary administration — provisions governing. In respect to a nonresident decedent, the provisions of this code govern:

(1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative and any other order concerning the estate; and

(2) the status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration.

History: En. 91A-4-209 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-209.

72-4-402. Adjudication in other jurisdiction binding on local representative. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

History: En. 91A-4-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-4-401.

Cross-References

Effect of judicial record of another state, 26-3-203.

CHAPTER 5

UPC — PERSONS UNDER DISABILITY GUARDIANSHIP AND CONSERVATORSHIP

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72-5-101. Definitions.
72-5-102. Jurisdiction of subject matter — consolidation of proceedings.
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72-5-201. Status of guardian of minor — how acquired generally — letters to indicate means of appointment.
72-5-202. Consent to jurisdiction by acceptance of appointment.
72-5-203 through 72-5-210 reserved.
72-5-211. Testamentary appointment of guardian of minor — when effective — priorities — notice of appointment.
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72-5-213. Objection by minor fourteen or older to testamentary appointment.
72-5-214 through 72-5-220 reserved.
72-5-221. Venue for proceedings for court appointment of guardian of minor.
72-5-222. Court appointment of guardian of minor — when allowed — priority of testamentary appointment.
72-5-223. Guardian of minor by court appointment — qualifications — nominee of minor preferred.
72-5-224. Temporary guardian of minor.
72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney.
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72-5-232. Proceedings subsequent to appointment — concurrent jurisdiction of court where ward resides — venue.
72-5-233. Termination of appointment — how effected — certain liabilities and obligations not affected.
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Part 3 — Guardians of Incapacitated Persons

72-5-301. Consent to jurisdiction by acceptance of appointment.
72-5-302. Testamentary appointment of guardian for incapacitated person — when effective — priorities.
72-5-303. Recognition of appointment of guardian by foreign will.
72-5-304. Objection by alleged incapacitated person to testamentary appointment.
72-5-305. Definitions.
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72-5-314. Notices in guardianship proceedings.
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72-5-319. Contents of petition for appointment of guardian.
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72-5-321. Powers and duties of guardian of incapacitated person.
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72-5-426. Letters as evidence of transfer of assets — recording.
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72-5-431. Preservation of estate plan — right to inspect will.
72-5-432. Compensation and expenses.
72-5-433. Claims against protected person — presentment, allowance, and payment — priorities.
72-5-434. Transaction involving conflict of interest — voidable — exceptions.
72-5-435. Persons dealing with conservator — protection.
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72-5-501. When power of attorney not affected by disability.
72-5-502. Power of attorney not revoked until notice.

Chapter Cross-References

Costs of committing patient already voluntarily admitted — transportation costs for voluntary admission, 53-21-113.

Part 1
General Provisions

72-5-101. Definitions. Unless otherwise apparent from the context, in this code, the following definitions apply:

(1) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(2) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.

(3) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.

(4) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

History: En. 91A-5-101 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-101; amd. Sec. 1, Ch. 382, L. 1991.

72-5-102. Jurisdiction of subject matter — consolidation of proceedings. (1) The court has jurisdiction over protective proceedings and guardianship proceedings.

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

History: En. 91A-5-102 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-102.

72-5-103. Delegation of powers by parent or guardian. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

History: En. 91A-5-104 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-104.

Cross-References

Judicial approval of marriage of minor, 40-1-213.

Powers of attorney, Title 72, ch. 5, part 5.

72-5-104. Informal discharge of duty to pay or deliver property to minor. (1) Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding $5,000 per annum, by paying or delivering the money or property to:

(a) the minor, if he has attained the age of 18 years or is married;

(b) any person having the care and custody of the minor with whom the minor resides;

(c) a guardian of the minor; or

(d) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

(3) The persons, other than the minor or any financial institution under (1)(d) above, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

History: En. 91A-5-103 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-103.

Part 2
Guardians of Minors

Part Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-201. Status of guardian of minor — how acquired generally — letters to indicate means of appointment. (1) A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court.

(2) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

(3) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

History: En. 91A-5-201, 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-201, 91A-5-208(part).

72-5-202. Consent to jurisdiction by acceptance of appointment. (1) By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

History: En. 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-208(part).

72-5-203 through 72-5-210 reserved.

72-5-211. Testamentary appointment of guardian of minor — when effective — priorities — notice of appointment. (1) The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under 72-5-213, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if before acceptance both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care or to his nearest adult relations.

History: **En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part).**

72-5-212. Recognition of appointment of guardian by foreign will. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.

History: **En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part).**

Cross-References

Effect of judicial record of another state, 26-3-203.

72-5-213. Objection by minor fourteen or older to testamentary appointment. A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person.

History: **En. 91A-5-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-203.**

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

72-5-214 through 72-5-220 reserved.

72-5-221. Venue for proceedings for court appointment of guardian of minor. The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

History: **En. 91A-5-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-205.**

72-5-222. Court appointment of guardian of minor — when allowed — priority of testamentary appointment. (1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order.

(2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment has not been prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

History: **En. 91A-5-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-204.**

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-223. Guardian of minor by court appointment — qualifications — nominee of minor preferred. The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor if the minor is 14 years of age or older unless the court finds the appointment contrary to the best interests of the minor.

History: **En. 91A-5-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-206.**

Cross-References

Appointment of guardian ad litem, 25-5-301.

Best interests of child, 40-4-212.

72-5-224. Temporary guardian of minor. If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than 6 months.

History: **En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(3).**

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if he is 14 or more years of age;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose.

History: **En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(1), (2), (4); amd. Sec. 2, Ch. 93, L. 1979.**

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-226 through 72-5-230 reserved.

72-5-231. Powers and duties of guardian of minor. Unless otherwise limited by the court, a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

(1) The guardian shall take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of 72-5-104. Any sums received must be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess must be paid at least annually to the conservator. Sums received by the guardian may not be used for compensation for the guardian's services except as approved by an order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the ward.

(4) A guardian shall report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the minor's welfare or as required by court rule.

History: En. 91A-5-209 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-209; amd. Sec. 2, Ch. 279, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 279 at beginning inserted "Unless otherwise limited by the court"; and made minor changes in style.

Cross-References

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

72-5-232. Proceedings subsequent to appointment — concurrent jurisdiction of court where ward resides — venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of a testamentary appointment was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court in this or another state and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: En. 91A-5-211 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-211.

72-5-233. Termination of appointment — how effected — certain liabilities and obligations not affected. A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts or his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

History: En. 91A-5-210 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-210.

72-5-234. Procedure for resignation or removal — petition, notice, and hearing — representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

History: En. 91A-5-212 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-212.

Part 3

Guardians of Incapacitated Persons

Part Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-301. Consent to jurisdiction by acceptance of appointment. (1) By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

History: En. 91A-5-305 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-305.

72-5-302. Testamentary appointment of guardian for incapacitated person — when effective — priorities. (1) The parent of an unmarried incapacitated person may appoint by will or other writing signed by the parent and attested by at least two witnesses a guardian of the incapacitated person. If both parents are dead or the surviving parent is adjudged incapacitated, a parental appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the incapacitated person and to the person having care of the person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) The spouse of a married incapacitated person may appoint by will or other writing signed by the spouse and attested by at least two witnesses a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the incapacitated person and to the person having care of the incapacitated person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or, in the case of nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. An effective appointment by a spouse has priority over an appointment by a parent.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(1), (2); amd. Sec. 18, Ch. 582, L. 1989.

72-5-303. Recognition of appointment of guardian by foreign will. An appointment effected by filing the guardian's acceptance under a will probated in the state of the decedent's domicile is effective in this state.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(3); amd. Sec. 19, Ch. 582, L. 1989.

Cross-References

Effect of judicial record of another state, 26-3-203.

72-5-304. Objection by alleged incapacitated person to testamentary appointment. Upon the filing in the court in which the will was probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under 72-5-305 through 72-5-325.

History: En. 91A-5-301 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-301(4); amd. Sec. 20, Ch. 582, L. 1989.

72-5-305. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Full guardian" means a guardian who possesses all the legal duties and powers enumerated in 72-5-321.

(2) "Guardian" includes a full guardian and a limited guardian.

(3) "Limited guardian" means a guardian who possesses fewer than all of the legal duties and powers of a full guardian and whose rights, powers, and duties have been specifically enumerated by the court.

History: En. Sec. 1, Ch. 344, L. 1981.

72-5-306. Purpose and basis for guardianship. Guardianship for an incapacitated person may be used only as is necessary to promote and protect the well-being of the person. The guardianship must be designed to encourage the development of maximum self-reliance and independence in the person and may be ordered only to the extent that the person's actual mental and physical limitations require it. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court.

History: En. Sec. 2, Ch. 344, L. 1981.

72-5-307 through 72-5-310 reserved.

72-5-311. Venue for proceedings for court appointment of guardian. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

History: En. 91A-5-302 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-302.

Cross-References

Venue, Title 25, ch. 2.

72-5-312. Who may be guardian — priorities. (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private, nonprofit corporation nominated by the incapacitated person, if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom he has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of such private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of such association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the person who is caring for him or paying benefits to him.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation who or which would be disqualified under subsections (4)(a) through (4)(c).

(5) If the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency.

History: En. 91A-5-311 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-311; amd. Sec. 3, Ch. 344, L. 1981.

72-5-313. Visitor in guardianship proceedings defined. A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, social work, medical care, mental health care, pastoral care, education, or rehabilitation and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

History: En. 91A-5-308 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-308; amd. Sec. 4, Ch. 344, L. 1981.

72-5-314. Notices in guardianship proceedings. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and his spouse, parents, and adult children;

(b) any person who is serving as his guardian, conservator, or who has his care and custody; and

(c) in case no other person is notified under (a), at least one of his closest adult relatives, if any can be found.

(2) Notice shall be served personally on the alleged incapacitated person and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in 72-1-301. Waiver of notice by the person alleged to be incapacitated is not

effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

History: **En. 91A-5-309 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-309.**

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-5-315. Procedure for court appointment of guardian — hearing — examination — interview — procedural rights. (1) The incapacitated person or any person interested in his welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of his own choice or the court may, in the interest of justice, appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem.

(3) The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests.

History: **En. 91A-5-303 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 222, L. 1977; amd. Sec. 2, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-303; amd. Sec. 8, Ch. 344, L. 1981.**

72-5-316. Findings — order of appointment. (1) If the court is satisfied that the person for whom a guardianship is sought is incapacitated and that judicial intervention in his personal freedom of action and decision is necessary to meet essential requirements for his physical health or safety, it may appoint a full guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the order. If the court is satisfied that the allegedly incapacitated person could handle the essential requirements for physical health or safety if his financial resources were managed by another, it shall order that the petition be treated as a petition for a protective order under part 4 of this chapter and proceed accordingly. Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent with the specific provisions of this part. In issuing its order the court shall make specific findings of fact.

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order shall specify whether a full or limited guardianship is being created. In the case of a limited guardianship, the order shall specify the particular powers and duties vested in the limited guardian and the period for which the limited guardianship is created.

(3) No incapacitated person may be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for such limitations. The order shall state that all rights not specifically limited are retained by the incapacitated person.

History: En. 91A-5-304 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-304; amd. Sec. 9, Ch. 344, L. 1981.

72-5-317. Temporary guardians. (1) If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

(2) If an appointed guardian is not effectively performing his duties or if there is no appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian, depending on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary guardian shall state whether a full or limited temporary guardianship is being created and, in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

(3) In case there is no person available and willing to act as temporary guardian for an incapacitated person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity who would otherwise be ineligible under that provision to act as guardian. This subsection does not permit the appointment of a person or entity who has an actual conflict of interest in regard to the purpose for which the temporary guardianship is sought. A temporary guardian who is otherwise ineligible shall serve until a person or entity who is not ineligible to serve as guardian and who is otherwise qualified to be guardian is appointed by the court to act as temporary guardian, but in no case may he serve for longer than 6 months.

(4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary limited guardian is entitled to exercise such powers as are specifically granted to him in the order of appointment, and the power of any permanent guardian previously appointed by the court to exercise those powers is suspended so long as the temporary limited guardian has authority. The court by specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians.

History: En. 91A-5-310 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-310; amd. Sec. 10, Ch. 344, L. 1981.

72-5-318. Request for notice — interested person. (1) Any interested person who desires to be notified before any order is made in a guardianship proceeding may file with the clerk a request for notice upon payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the guardian, if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and his address or that of his attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the alleged incapacitated person is an interested person in guardianship proceedings.

History: En. Sec. 5, Ch. 344, L. 1981.

72-5-319. Contents of petition for appointment of guardian. (1) The petition for appointment of a guardian shall contain:

(a) the name, residence, and mailing address of the petitioner, his relationship to the alleged incapacitated person, and his interest in the matter;

(b) the name, residence, and mailing address of the alleged incapacitated person;

(c) the nature and degree of the alleged incapacity;

(d) if the petition in any way affects the management of the property of the alleged incapacitated person, the approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

(e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the incapacitated person or a conservator of his property;

(f) the name, residence, and mailing address of the person whom the petitioner seeks to have appointed guardian;

(g) the names, residences, and nature of relationship, so far as is known or can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(h) the name and residence of the person or institution having the care and custody of the alleged incapacitated person;

(i) the reasons why the appointment of a guardian is sought and whether a limited guardianship or full guardianship is requested;

(j) the facts supporting the allegations of incapacity and the need for a guardian;

(k) the specific areas of protection and assistance requested and the limitation of rights requested to be included in the order of appointment;

(l) in the case of a petition for limited guardianship, the particular powers and areas of authority that the petition seeks to have vested in the limited guardian as provided in 72-5-320 and the term for which the limited guardianship is requested;

(m) in the case of a petition for full guardianship, the length of time the guardianship is expected to last.

(2) The petition may also include a request for temporary guardianship as provided in 72-5-317 if the petitioner believes that the requisites of that section are met and that the appointment of a temporary guardian, pending the completion of guardianship proceedings, is necessary to protect the welfare of the alleged incapacitated person. The facts requiring appointment of a temporary guardian shall be stated with specificity.

History: En. Sec. 6, Ch. 344, L. 1981.

72-5-320. Purposes for establishment of limited guardianship. A petition seeking the establishment of a limited guardianship shall specify the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required. The purposes for which a limited guardian may be appointed include:

(1) to care for and maintain the alleged incapacitated person;

(2) to assert and protect the rights and best interests of the alleged incapacitated person;

(3) to provide timely and informed consent to necessary medical procedures and procedures implemented in connection with habilitation and training programs;

(4) to assist in the acquisition of necessary training, habilitation, and education for the incapacitated person;

(5) to exercise any other powers, duties, or limitations in regard to the care of the incapacitated person or the management of his property that the petition shall explicitly specify and which may be no greater than the powers a full guardian can exercise.

History: En. Sec. 7, Ch. 344, L. 1981.

72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to his possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of his ward, he shall make provision for the care, comfort, and maintenance of his ward and whenever appropriate arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If no conservator for the estate of the ward has been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(e) Unless waived by the court, a full guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for his failure to file a timely report.

(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee such aspects of the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for

observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

History: **En. 91A-5-312 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-312; amd. Sec. 11, Ch. 344, L. 1981; amd. Sec. 1, Ch. 401, L. 1983.**

72-5-322. Petition of guardian for treatment of ward. (1) If a guardian believes that the guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment. However, the order may not forcibly detain the ward against the ward's will for more than 72 hours.

(2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights guaranteed to a person with a mental disorder and who requires commitment under 53-21-114, 53-21-115, 53-21-119, and 53-21-120.

History: **En. 91A-5-314 by Sec. 3, Ch. 514, L. 1977; R.C.M. 1947, 91A-5-314; amd. Sec. 39, Ch. 490, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 490 in (2), after "guaranteed", substituted "to a person with a mental disorder and who requires commitment" for "seriously mentally ill persons"; and made minor changes in style. Amendment effective July 1, 1997.

72-5-323. Proceedings subsequent to appointment — concurrent jurisdiction of court where ward resides — venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of a testamentary appointment was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: **En. 91A-5-313 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-313.**

Cross-References

Best interests of child, 40-4-212.

72-5-324. Termination of appointment — how effected — certain liabilities and obligations not affected. (1) The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(2) Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

History: **En. 91A-5-306 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-306.**

72-5-325. Petition for removal or resignation of guardian — termination of incapacity — appointment of successor guardian. (1) On petition of the ward or any person interested in the ward's welfare, the court, after hearing, may remove a guardian if in the best interests of the ward. On petition of the guardian, the court, after hearing, may accept a resignation.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding 6 months, during which a petition for an adjudication that the ward is no longer incapacitated may not be filed without special leave. Subject to that restriction, the ward or any person interested in the welfare of the ward may petition for an order that the ward is no longer incapacitated and for termination of the guardianship. A request for an order may also be made informally to the court, and any person who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court.

(3) Upon removal, resignation, or death of the guardian or if the guardian is determined to be incapacitated, the court may appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian.

History: En. 91A-5-307 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-307; amd. Sec. 21, Ch. 582, L. 1989.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Part 4

Protection of Property of Minors and Persons Under Disability

Part Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Minors, Title 41.

Persons with developmental disabilities, Title 53, ch. 20.

Mentally ill, Title 53, ch. 21.

72-5-401. Original petition for appointment or protective order — who may petition. The person to be protected, any person who is interested in his estate, affairs, or welfare, including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

History: En. 91A-5-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-404(1).

72-5-402. Contents of petition. (1) The petition shall set forth to the extent known:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the person to be protected;

(c) the name and address of his guardian, if any;

(d) the name and address of his nearest relative known to the petitioner;

(e) a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and

(f) the reason why appointment of a conservator or other protective order is necessary.

(2) If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

History: **En. 91A-5-404 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-404(2).**

72-5-403. Notice — waiver. (1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents must be served personally with notice of the proceeding at least 14 days before the date of hearing if they can be found within the state, or if they cannot be found within the state, they must be given notice in accordance with 72-1-301. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order and of any subsequent hearing must be given to any person who has filed a request for notice under 72-5-404 and to interested persons and other persons as the court may direct. Except as otherwise provided in (1), notice shall be given in accordance with 72-1-301.

History: **En. 91A-5-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-405.**

72-5-404. Request for notice — interested person. (1) Any interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and his address or that of his attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

History: **En. 91A-5-406 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-406.**

72-5-405. Exclusive and concurrent jurisdiction of particular court after petition and notice. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

History: **En. 91A-5-402 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-402.**

72-5-406. Consent to jurisdiction by acceptance of appointment as conservator. (1) By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the conservator or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

History: En. 91A-5-413 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-413.

72-5-407. Venue. Venue for proceedings under this part is:

(1) in the place in this state where the person to be protected resides, whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where he has property.

History: En. 91A-5-403 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-403.

Cross-References

Venue, Title 25, ch. 2.

72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

History: En. 91A-5-407 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-407; amd. Sec. 1, Ch. 208, L. 1985; amd. Sec. 4, Ch. 362, L. 1985.

72-5-409. Cause for appointment of conservator or issuance of protective order. Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that:

(a) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) the person has property which will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

History: En. 91A-5-401 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-401.

72-5-410. Who may be appointed conservator — priorities. (1) The court may appoint an individual or a corporation with general power to serve as trustee as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom he has resided for more than 6 months prior to the filing of the petition;

(g) a person nominated by the person who is caring for him or paying benefits to him;

(h) a conservator corporation organized under Title 35, chapter 2;

(i) the public administrator.

(2) A person in priorities (a), (c), (d), (e), or (f) may nominate in writing a person to serve in his stead.

(3) With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

History: En. 91A-5-410 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-410; amd. Sec. 5, Ch. 362, L. 1985.

72-5-411. Bond — court may require — amount. (1) The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law with sureties as it shall specify.

(2) Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus 1 year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(3) The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

History: En. 91A-5-411 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-411.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-5-412. Terms and requirements of bond. (1) The following requirements and provisions apply to any bond required under 72-5-411:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator.

(d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: En. 91A-5-412 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-412.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-5-413. Petitions for orders subsequent to appointment — interested persons. (1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

(a) requiring bond or security or additional bond or security or reducing bond;

(b) requiring an accounting for the administration of the trust;

(c) directing distribution;

(d) removing the conservator and appointing a temporary or successor conservator; or

(e) granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(4) For purposes of this section, any person, institution, or agency which is furnishing or supplying any money for support or care of a person for whom a conservator has been appointed is a person interested in the welfare of such protected person.

History: En. 91A-5-416 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-416.

72-5-414. Resignation or removal of conservator for cause — successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

History: En. 91A-5-415 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-415; amd. Sec. 5, Ch. 6, L. 1979.

72-5-415. Public administrator as conservator when no other appropriate person. (1) Whenever a professional person, as defined in 53-21-102, has reason to believe that any person is in need of the appointment of a conservator for the effective management of his property or affairs under this part and that the person has no relative, friend, or other appropriate person who is able and willing to serve as a conservator for the person, the professional person must notify the public administrator.

(2) Whenever the public administrator is notified under subsection (1) of the need for the appointment of a conservator and reasonable cause exists, he must file a petition for appointment of the public administrator as conservator of the person.

History: En. Secs. 1, 2, Ch. 362, L. 1985.

Cross-References

Office of Public Administrator, 7-4-3004;
Title 72, ch. 15.

72-5-416 through 72-5-420 reserved.

72-5-421. Powers of court as to property and affairs of protected persons generally. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his

household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include but are not limited to power to:

(a) make gifts;

(b) convey or release his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(c) exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;

(d) enter into contracts;

(e) create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life;

(f) exercise options of the disabled person to purchase securities or other property;

(g) exercise his rights to elect options and change beneficiaries under insurance and annuity policies and surrender the policies for their cash value;

(h) exercise his right to an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person and that he either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section, determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

History: En. 91A-5-408 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-408.

72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing conservator. (1) If it is established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include but are not limited to:

(a) payment, delivery, deposit, or retention of funds or property;

(b) sale, mortgage, lease, or other transfer of property;

(c) entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or

(d) addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial

affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who, upon appointment, has the authority conferred by the order and serves until discharged by order after report to the court of all matters done pursuant to the order of appointment.

History: En. 91A-5-409 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-409; amd. Sec. 6, Ch. 6, L. 1979.

72-5-423. Fiduciary duty of conservator. In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees.

History: En. 91A-5-417 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-417.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

72-5-424. Inventory and records. (1) Within 90 days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person, together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of 14 years, and has sufficient mental capacity to understand these matters and to any parent or guardian with whom the protected person resides.

(2) The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

History: En. 91A-5-418 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-418.

72-5-425. Title by appointment as conservator — appointment not transfer for certain purposes. (1) The appointment of a conservator vests in him title as trustee to all property of the protected person presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys-in-fact.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

History: En. 91A-5-420 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-420; amd. Sec. 7, Ch. 6, L. 1979.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

72-5-426. Letters as evidence of transfer of assets — recording. (1) Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or his successors.

(2) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person.

History: En. 91A-5-421 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-421.

72-5-427. Powers of conservator in administration. (1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of 18 years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in 72-5-231 until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2.

(2) A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation to:

(a) collect, hold, and retain assets of the estate, including land in another state, until in his judgment disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator in any fiduciary capacity holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank including a bank operated by the conservator;

(g) acquire or dispose of an estate asset, including land in another state, for cash or on credit at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset; take an option for the acquisition of any asset;

(m) vote a security in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;

(s) pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist him in the performance of his administrative duties; act upon their recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(y) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

History: **En. 91A-5-424 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-424.**

72-5-428. Distributive powers and duties of conservator generally. (1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:

(i) the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(ii) the accustomed standard of living of the protected person and members of his household;

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures which the conservator might have made or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make in amounts which do not exceed in total for any year 20% of the income from the estate.

History: **En. 91A-5-425 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-425(1), (2).**

72-5-429. Distribution upon attainment of majority, termination of disability, or death of protected person. (1) When a minor who has not been adjudged disabled under 72-5-409(2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(2) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(3) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under 72-3-106 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in 72-3-222, 72-3-223(1), and parts 5 through 10 of chapter 3, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

History: En. 91A-5-425 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-425(3) thru (5).

72-5-430. Enlargement or limitation of powers of conservator by court. (1) Subject to the restrictions in 72-5-421(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by 72-5-427, 72-5-428, and 72-5-429, any power which the court itself could exercise under subsections (2) and (3) of 72-5-421.

(2) The court may, at the time of appointment or later, limit the powers of a conservator conferred by the court and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by 72-5-427, 72-5-428, or 72-5-429, the limitation shall be endorsed upon his letters of appointment.

History: En. 91A-5-426 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-426.

72-5-431. Preservation of estate plan — right to inspect will. In investing the estate and in selecting assets of the estate for distribution under 72-5-428, in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

History: En. 91A-5-427 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-427.

72-5-432. Compensation and expenses. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

History: En. 91A-5-414 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-414.

72-5-433. Claims against protected person — presentment, allowance, and payment — priorities. (1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

(2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

History: En. 91A-5-428 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-428.

72-5-434. Transaction involving conflict of interest — voidable — exceptions. Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

History: En. 91A-5-422 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-422.

72-5-435. Persons dealing with conservator — protection. (1) A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in

72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or laws simplifying transfers of securities by fiduciaries.

(3) The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

History: En. 91A-5-423 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-423; amd. Sec. 23, Ch. 582, L. 1989.

72-5-436. Claims arising during conservatorship — individual liability of conservator. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a conservator in his fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding or action.

History: En. 91A-5-429 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-429.

72-5-437. Termination of conservatorship. The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors to evidence the transfer.

History: En. 91A-5-430 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-430.

72-5-438. Accounts — final and intermediate. (1) Each conservator shall account to the court for administration of the trust not less than annually, unless the court directs otherwise, upon resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator shall account to the court or to the formerly protected person or the successors of that person.

(2) Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the hearing; and an order, following notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate, to be made in any manner the court specifies.

History: En. 91A-5-419 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-419; amd. Sec. 2, Ch. 401, L. 1983; amd. Sec. 22, Ch. 582, L. 1989.

72-5-439. Payment of debt and delivery of property to foreign conservator without local proceedings. (1) Any person indebted to a protected person or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state or residence of the protected person upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(a) that no protective proceeding relating to the protected person is pending in this state; and

(b) that the foreign conservator is entitled to payment or to receive delivery.

(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

History: En. 91A-5-431 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-431.

Part 5
Powers of Attorney

Part Cross-References

Agency, Title 28, ch. 10.

Statutory Form Power of Attorney Act, Title 72, ch. 31, part 2.

72-5-501. When power of attorney not affected by disability. (1) A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact or agent in writing and the writing contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. All acts done by the attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

(2) If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the conservator as well as the principal. The conservator has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated. A principal may nominate, by a durable power of attorney, the conservator of his estate or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

History: **En. 91A-5-501 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-501; amd. Sec. 1, Ch. 283, L. 1985; amd. Sec. 24, Ch. 582, L. 1989.**

72-5-502. Power of attorney not revoked until notice. (1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal.

(2) The disability or incapacity of a principal who has previously executed a power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

(3) As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact or agent stating that he did not have, at the time of exercise of the power, actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(4) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

History: **En. 91A-5-502 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-502; amd. Sec. 2, Ch. 283, L. 1985.**

CHAPTER 6

NONPROBATE TRANSFERS ON DEATH

Part 1 — Provisions Relating to Effect of Death

72-6-101. Renumbered 72-9-101 by Code Commissioner, 1993.
72-6-102. Renumbered 72-9-102 by Code Commissioner, 1993.
72-6-103. Renumbered 72-9-103 by Code Commissioner, 1993.
72-6-104 through 72-6-106 reserved.
72-6-107 through 72-6-110. Renumbered by Code Commissioner, 1993.
72-6-111. Nonprobate transfers on death.
72-6-112 and 72-6-113 reserved.
72-6-114. Renumbered 72-9-114 by Code Commissioner, 1993.
72-6-115. Renumbered 72-9-115 by Code Commissioner, 1993.
72-6-116. Renumbered 72-9-116 by Code Commissioner, 1993.
72-6-117 through 72-6-119 reserved.
72-6-120. Renumbered 72-9-120 by Code Commissioner, 1993.

Part 2 — Multiple-Person Accounts

72-6-201. Definitions.
72-6-202. Limitation on scope of part.
72-6-203. Types of account — existing accounts.
72-6-204. Forms.
72-6-205. Designation of agent.
72-6-206. Applicability of beneficial ownership provisions.
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72-6-211. Ownership during lifetime.
72-6-212. Rights at death.
72-6-213. Alteration of rights.
72-6-214. Accounts and transfers nontestamentary.
72-6-215. Rights of creditors and others.
72-6-216. Community property and tenancy by entireties.
72-6-217 through 72-6-220 reserved.
72-6-221. Authority of financial institution.
72-6-222. Payment on multiple-party account.
72-6-223. Payment on POD designation.
72-6-224. Payment to designated agent.
72-6-225. Payment to minor.
72-6-226. Discharge.
72-6-227. Setoff.

Part 3 — Uniform TOD Security Registration Act

72-6-301. Definitions.
72-6-302. Registration in beneficiary form — sole or joint tenancy ownership.
72-6-303. Registration in beneficiary form — applicable law.
72-6-304. Origination of registration in beneficiary form.
72-6-305. Form of registration in beneficiary form.
72-6-306. Effect of registration in beneficiary form.
72-6-307. Ownership on death of owner.
72-6-308. Protection of registering entity.
72-6-309. Nontestamentary transfer on death.
72-6-310. Terms, conditions, and forms for registration.
72-6-311. Application of part.

Part 1

Provisions Relating to Effect of Death

72-6-101. Renumbered 72-9-101 by Code Commissioner, 1993.

72-6-102. Renumbered 72-9-102 by Code Commissioner, 1993.

72-6-103. Renumbered 72-9-103 by Code Commissioner, 1993.

72-6-104 through 72-6-106 reserved.

72-6-107 through 72-6-110. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-6-107.	Renumbered 72-9-107.
72-6-108.	Renumbered 72-9-108.
72-6-109.	Renumbered 72-9-109.
72-6-110.	Renumbered 72-9-110.

72-6-111. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state.

History: En. Sec. 83, Ch. 494, L. 1993.

72-6-112 and 72-6-113 reserved.

72-6-114. Renumbered 72-9-114 by Code Commissioner, 1993.

72-6-115. Renumbered 72-9-115 by Code Commissioner, 1993.

72-6-116. Renumbered 72-9-116 by Code Commissioner, 1993.

72-6-117 through 72-6-119 reserved.

72-6-120. Renumbered 72-9-120 by Code Commissioner, 1993.

Part 2
Multiple-Person Accounts

Part Cross-References

Ownership by several persons — types, 70-1-306.

Joint interest defined, 70-1-307.

72-6-201. Definitions. In this part, the following definitions apply:

(1) "Account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) "POD designation" means the designation of:

(a) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

(b) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) "Receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established or, if the terms of the account require notice at a particular place, in the place required.

(10) "Request" means a request for payment that complies with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; however, for purposes of this part, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions of the contract of deposit, including the type of account, the parties to the account, and the form of the contract.

History: En. Sec. 84, Ch. 494, L. 1993; amd. Sec. 29, Ch. 592, L. 1995.

72-6-202. Limitation on scope of part. This part does not apply to:

(1) an account established for a partnership, joint venture, or other organization for a business purpose;

(2) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

(3) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

History: En. Sec. 85, Ch. 494, L. 1993.

72-6-203. Types of account — existing accounts. (1) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to 72-6-212(3), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(2) An account established before, on, or after October 1, 1993, whether in the form prescribed in 72-6-204 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship and with or without a POD designation or an agency designation, within the meaning of this part, and is governed by this part.

History: En. Sec. 86, Ch. 494, L. 1993.

72-6-204. Forms. (1) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this part applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

....

OWNERSHIP [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

..... MULTIPLE-PARTY ACCOUNT

> Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent. However, any one party may withdraw the entire amount on deposit in the account.

CHANGING TERMS OF ACCOUNT [Select One and Each Party Initial]:

..... MULTIPLE-PARTY ACCOUNT'S TERMS MAY BE CHANGED BY A SINGLE PARTY

..... MULTIPLE-PARTY ACCOUNT'S TERMS MAY BE CHANGED ONLY BY AGREEMENT OF ALL PARTIES

RIGHTS AT DEATH [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

..... SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

....

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

....

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

..... MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

[To Add Agency Designation to Account, Name One or More Agents]:

....

[Select One And Initial]:

..... AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

..... AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(2) A contract of deposit that does not contain provisions in substantially the form provided in subsection (1) is governed by the provisions of this part

applicable to the type of account that most nearly conforms to the depositor's intent.

History: En. Sec. 87, Ch. 494, L. 1993; amd. Sec. 3, Ch. 279, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 279 in middle of form in (1) substituted language authorizing a change in the terms in a multiple-party account by a single party or by agreement of all parties for language that read: "Further, any one party may change the type of account."

72-6-205. Designation of agent. (1) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(2) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(3) Death of the sole party or last-surviving party terminates the authority of an agent.

History: En. Sec. 88, Ch. 494, L. 1993.

Cross-References

Agency, Title 28, ch. 10.

72-6-206. Applicability of beneficial ownership provisions. The provisions of 72-6-211 through 72-6-216 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors and do not apply to the right of those persons to payment as determined by the terms of the account. Sections 72-6-221 through 72-6-227 govern the liability and setoff rights of financial institutions that make payments pursuant to it.

History: En. Sec. 89, Ch. 494, L. 1993.

72-6-207 through 72-6-210 reserved.

72-6-211. Ownership during lifetime. (1) In this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party that have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(2) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(3) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(4) An agent in an account with an agency designation has no beneficial right to sums on deposit.

History: En. Sec. 90, Ch. 494, L. 1993.

72-6-212. Rights at death. (1) Except as otherwise provided in this part, on the death of a party, sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under 72-6-211 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under 72-6-211 belongs to the surviving parties in equal shares and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under 72-6-211 and the right of survivorship continues between the surviving parties.

(2) In an account with a POD designation:

(a) on the death of one of two or more parties, the rights in sums on deposit are governed by subsection (1);

(b) on the death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares and there is no right of survivorship in the event of the death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last-surviving party.

(3) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by the death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under 72-6-211 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(4) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

History: **En. Sec. 91, Ch. 494, L. 1993.**

72-6-213. Alteration of rights. (1) Rights at death under 72-6-212 are determined by the terms of the account at the death of a party.

(2) Except as provided in subsection (3) and unless otherwise agreed in writing between the parties to the account, the terms of an account may be altered by written notice given by a party to the financial institution to change the terms of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(3) A financial institution may, in its discretion, refuse to honor a request for alteration of rights that would change:

(a) the financial institution's obligations or rights under the contract of deposit; or

(b) the parties to a multiple-party account if the request is not signed by all of the parties to the account.

(4) A right of survivorship arising from the express terms of the account, from 72-6-212, or from a POD designation may not be altered by will.

History: En. Sec. 92, Ch. 494, L. 1993; amd. Sec. 30, Ch. 592, L. 1995; amd. Sec. 4, Ch. 279, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 279 at beginning of (2) inserted exception clause; inserted (3) authorizing a financial institution to refuse to honor a request for alteration of rights resulting in a change in the institution's rights under contract of deposit or in parties to a multiple-party account unless signed by all parties; and made minor changes in style.

72-6-214. Accounts and transfers nontestamentary. Except as provided in Title 72, chapter 2, part 2, or as a consequence of and to the extent directed by 72-6-215, a transfer resulting from the application of 72-6-212 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to Title 72, chapters 1 through 5.

History: En. Sec. 93, Ch. 494, L. 1993.

72-6-215. Rights of creditors and others. (1) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under this part is not effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children.

(2) A surviving party or beneficiary who receives payment from an account after the death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under 72-6-211, to the extent necessary to discharge the claims and allowances described in subsection (1) remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within 1 year after death of the decedent.

(3) A surviving party or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other account of the decedent.

(4) Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased party provided in 72-6-226 for a financial institution that makes payment in accordance with the terms of the account.

History: En. Sec. 94, Ch. 494, L. 1993.

72-6-216. Community property and tenancy by entireties. (1) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other that arises from the express terms of the account or 72-6-212 may not be altered by will.

(2) This part does not affect the law governing tenancy by the entireties.

History: En. Sec. 95, Ch. 494, L. 1993.

72-6-217 through 72-6-220 reserved.

72-6-221. Authority of financial institution. A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

History: En. Sec. 96, Ch. 494, L. 1993.

Cross-References

Financial Institutions, Title 32.

72-6-222. Payment on multiple-party account. A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) the personal representative or a successor claiming under 72-3-1101 if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary, unless the account is without right of survivorship under 72-6-212.

History: En. Sec. 97, Ch. 494, L. 1993.

72-6-223. Payment on POD designation. A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution, showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary.

History: En. Sec. 98, Ch. 494, L. 1993.

72-6-224. Payment to designated agent. A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received and whether or not the authority of the agent terminates on the disability or incapacity of a party.

History: En. Sec. 99, Ch. 494, L. 1993.

Cross-References

Agency, Title 28, ch. 10.

72-6-225. Payment to minor. If a financial institution is required or permitted to make payment pursuant to this part to a minor designated as a beneficiary, payment may be made pursuant to the Montana Uniform Transfers to Minors Act, Title 72, chapter 26.

History: En. Sec. 100, Ch. 494, L. 1993.

72-6-226. Discharge. (1) Payment made pursuant to this part in accordance with the terms of an account, or honoring a request for alteration of rights made in accordance with 72-6-213, discharges the financial institution from all claims for amounts so paid or alterations so made, whether or not the payment or alteration is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment or alteration may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment or alteration is requested, received, or made.

(2) Protection under this section does not extend to payments or alterations made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account or alteration of rights, including payments or alterations relating to an account having an agency designation, should not be permitted and after the financial institution has had a reasonable opportunity to act on the notice when the payment is made or the alteration is requested. Unless the notice is withdrawn by the person giving it, the successor of any deceased party shall concur in a request for payment or alteration if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account or to honor a request for alterations.

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts or regarding whether a request for an alteration of rights to an account was improper between the parties.

History: En. Sec. 101, Ch. 494, L. 1993; amd. Sec. 31, Ch. 592, L. 1995; amd. Sec. 5, Ch. 279, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 279 throughout section, after "payment" or "payments", inserted "or alteration" or "or alterations"; in first sentence in (1), after "account", inserted "or honoring a request for alteration of rights made in accordance with 72-6-213" and after "amounts so paid" inserted "or alterations so made"; in first sentence in (2), after "account", substituted "or alteration of rights, including payments or alterations relating to an account" for "including one" and at end inserted "or the alteration is requested"; at end of (3) inserted "or to honor a request for alterations"; and at end of (4) inserted "or regarding whether a request for an alteration of rights to an account was improper between the parties".

72-6-227. Setoff. Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is either the proportion to which the party is, or immediately before death was, beneficially entitled under 72-6-211 or, in the absence of proof of that proportion, an equal share with all parties.

History: En. Sec. 102, Ch. 494, L. 1993.

Part 3

Uniform TOD Security Registration Act

Part Cross-References

Securities, Title 30, ch. 10.

72-6-301. Definitions. As used in this part, the following definitions apply:

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

History: En. Sec. 103, Ch. 494, L. 1993.

72-6-302. Registration in beneficiary form — sole or joint tenancy ownership. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form and not as tenants in common.

History: En. Sec. 104, Ch. 494, L. 1993.

Cross-References

Joint interest defined, 70-1-307.

72-6-303. Registration in beneficiary form — applicable law. (1) A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state:

(a) of organization of the issuer or registering entity;

(b) of the location of the registering entity's principal office;

(c) of the office of its transfer agent or its office making the registration; or

(d) listed as the owner's address at the time of registration.

(2) A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

History: En. Sec. 105, Ch. 494, L. 1993.

72-6-304. Origination of registration in beneficiary form. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

History: En. Sec. 106, Ch. 494, L. 1993.

72-6-305. Form of registration in beneficiary form. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

History: En. Sec. 107, Ch. 494, L. 1993.

72-6-306. Effect of registration in beneficiary form. The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

History: En. Sec. 108, Ch. 494, L. 1993.

72-6-307. Ownership on death of owner. On the death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of the death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

History: En. Sec. 109, Ch. 494, L. 1993.

72-6-308. Protection of registering entity. (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in this part.

(3) (a) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a

transfer of the security in accordance with 72-6-307 and does so in good faith reliance on:

(i) the registration;

(ii) this part; and

(iii) information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.

(b) The protections of this part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this part.

(4) The protection provided by this part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

History: En. Sec. 110, Ch. 494, L. 1993.

72-6-309. Nontestamentary transfer on death. (1) A transfer on death, resulting from a registration in beneficiary form, is effective by reason of the contract regarding the registration between the owner and the registering entity and this part and is not testamentary.

(2) This part does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

History: En. Sec. 111, Ch. 494, L. 1993.

72-6-310. Terms, conditions, and forms for registration. (1) (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for:

(i) registrations in beneficiary form; and

(ii) implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

(b) The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death that governs inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

(b) multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.;

(c) multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TODD John S. Brown Jr. LDPS.

History: En. Sec. 112, Ch. 494, L. 1993.

72-6-311. Application of part. This part applies to registrations of securities in beneficiary form made before or after October 1, 1993, by decedents dying on or after October 1, 1993.

History: En. Sec. 131, Ch. 494, L. 1993.

CHAPTERS 7 AND 8

RESERVED

CHAPTER 9

DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH

Part 1 — Uniform Disposition of Community Property Rights at Death

72-9-101. Short title.
72-9-102. Application.
72-9-103. Rebuttable presumptions.
72-9-104 through 72-9-106 reserved.
72-9-107. Disposition upon death.
72-9-108. Perfection of title of surviving spouse.
72-9-109. Perfection of title of personal representative, heir, or devisee.
72-9-110. Purchaser for value or lender.
72-9-111 through 72-9-113 reserved.
72-9-114. Creditor's rights.
72-9-115. Acts of married persons.
72-9-116. Limitations on testamentary disposition.
72-9-117 through 72-9-119 reserved.
72-9-120. Uniformity of application and construction.

Part 1

Uniform Disposition of Community Property Rights at Death

72-9-101. Short title. This part shall be known and may be cited as the "Uniform Disposition of Community Property Rights at Death Act".

History: En. Sec. 1, Ch. 395, L. 1989; Sec. 72-6-101, MCA 1991; redes. 72-9-101 by Code Commissioner, 1993.

72-9-102. Application. This part applies to the disposition at death of the following property acquired by a married person:

(1) (a) all personal property, wherever situated, that was acquired as or became and remained community property under the laws of another jurisdiction; and

(b) all or the proportionate part of that property acquired with the rents, issues, or income of, the proceeds from, or in exchange for that community property; or

(c) property traceable to that community property; or

(2) all or the proportionate part of any real property situated in this state that was acquired with the rents, issues, or income of, the proceeds from, or in exchange for property acquired as or which became and remained community property under the laws of another jurisdiction, or property traceable to that community property.

History: En. Sec. 2, Ch. 395, L. 1989; Sec. 72-6-102, MCA 1991; redes. 72-9-102 by Code Commissioner, 1993.

Cross-References

Exempt property and allowances, Title 72, ch. 2, part 4.

Inheritance and estate taxes, Title 72, ch. 16.

72-9-103. Rebuttable presumptions. In determining whether this part applies to specific property, the following rebuttable presumptions apply:

(1) property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become and remained property to which this part applies; and

(2) real property situated in this state and personal property, wherever situated, acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this part applies.

History: En. Sec. 3, Ch. 395, L. 1989; Sec. 72-6-103, MCA 1991; redes. 72-9-103 by Code Commissioner, 1993.

Cross-References

Disputable presumptions, 26-1-602.

72-9-104 through 72-9-106 reserved.

72-9-107. Disposition upon death. Upon death of a married person, one-half of the property to which this part applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the Uniform Probate Code. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the Uniform Probate Code. With respect to property to which this part applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will.

History: En. Sec. 4, Ch. 395, L. 1989; Sec. 72-6-107, MCA 1991; redes. 72-9-107 by Code Commissioner, 1993.

Cross-References

General probate and administration, Title 72, ch. 3, part 1.

Special provisions relating to distribution, Title 72, ch. 3, part 9.

72-9-108. Perfection of title of surviving spouse. If the title to any property to which this part applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the district court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the district court. Neither the personal representative nor the district court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this part applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

History: En. Sec. 5, Ch. 395, L. 1989; Sec. 72-6-108, MCA 1991; redes. 72-9-108 by Code Commissioner, 1993.

72-9-109. Perfection of title of personal representative, heir, or devisee. If the title to any property to which this part applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this part applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

History: En. Sec. 6, Ch. 395, L. 1989; Sec. 72-6-109, MCA 1991; redes. 72-9-109 by Code Commissioner, 1993.

Cross-References

Powers and duties of personal representative, Title 72, ch. 3, part 6.

Foreign personal representatives, Title 72, ch. 4.

72-9-110. Purchaser for value or lender. (1) If a surviving spouse has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest must be treated in the same manner as the property transferred to the purchaser for value or a lender.

History: En. Sec. 7, Ch. 395, L. 1989; Sec. 72-6-110, MCA 1991; redes. 72-9-110 by Code Commissioner, 1993.

72-9-111 through 72-9-113 reserved.

72-9-114. Creditor's rights. This part does not affect rights of creditors with respect to property to which this part applies.

History: En. Sec. 8, Ch. 395, L. 1989; Sec. 72-6-114, MCA 1991; redes. 72-9-114 by Code Commissioner, 1993.

Cross-References

Creditors' claims, Title 72, ch. 3, part 8.

72-9-115. Acts of married persons. This part does not prevent married persons from severing or altering their interests in property to which this part applies.

History: En. Sec. 9, Ch. 395, L. 1989; Sec. 72-6-115, MCA 1991; redes. 72-9-115 by Code Commissioner, 1993.

Cross-References

Husband and wife — joint interests, obligations and powers, Title 40 ch. 2, part 1.

Elective share of surviving spouse, Title 72, ch. 2, part 2.

72-9-116. Limitations on testamentary disposition. This part does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

History: En. Sec. 10, Ch. 395, L. 1989; Sec. 72-6-116, MCA 1991; redes. 72-9-116 by Code Commissioner, 1993.

72-9-117 through 72-9-119 reserved.

72-9-120. Uniformity of application and construction. Any person applying and interpreting this part shall do so as to make uniform the law with respect to the subject of this part among those states that enact it.

History: En. Sec. 11, Ch. 395, L. 1989; Sec. 72-6-120, MCA 1991; redes. 72-9-120 by Code Commissioner, 1993.

CHAPTER 10

SUPPLEMENTARY GENERAL PROVISIONS ON PROBATE AND SUCCESSION

(Repealed. Sec. 134, Ch. 494, L. 1993)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-10-101. En. Sec. 314, p. 322, L. 1877; re-en. Sec. 314, 2nd Div. Rev. Stat. 1879; re-en. Sec. 314, 2nd Div. Comp. Stat. 1887; amd. Sec. 2910, C. Civ. Proc. 1895; re-en. Sec. 7701, Rev. C. 1907; re-en. Sec. 10355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1704; re-en. Sec. 10355, R.C.M. 1935; R.C.M. 1947, 91-4301(part); amd. Sec. 8, Ch. 6, L. 1979.

72-10-102. En. Sec. 314, p. 322, L. 1877; re-en. Sec. 314, 2nd Div. Rev. Stat. 1879; re-en. Sec. 314, 2nd Div. Comp. Stat. 1887; amd. Sec. 2910, C. Civ. Proc. 1895; re-en. Sec. 7701, Rev. C. 1907; re-en. Sec. 10355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1704; re-en. Sec. 10355, R.C.M. 1935; R.C.M. 1947, 91-4301(part).

72-10-103. En. Sec. 330, p. 325, L. 1877; re-en. Sec. 330, 2nd Div. Rev. Stat. 1879; re-en. Sec. 330, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2926, C. Civ. Proc. 1895; re-en. Sec. 7717, Rev. C. 1907; re-en. Sec. 10371, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1719; re-en. Sec. 10371, R.C.M. 1935; R.C.M. 1947, 91-4317.

72-10-104. En. Sec. 332, p. 326, L. 1877; re-en. Sec. 332, 2nd Div. Rev. Stat. 1879; re-en. Sec. 332, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2929, C. Civ. Proc. 1895; re-en. Sec. 7720, Rev. C. 1907; re-en. Sec. 10374, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1722; re-en. Sec. 10374, R.C.M. 1935; R.C.M. 1947, 91-4320; amd. Sec. 9, Ch. 6, L. 1979.

72-10-105. En. Sec. 109, p. 264, L. 1877; re-en. Sec. 109, 2nd Div. Rev. Stat. 1879; re-en. Sec. 109, 2nd Div. Comp. Stat. 1887; amd. Sec. 2530, C. Civ. Proc. 1895; en. Sec. 1, p. 244, L. 1897; re-en. Sec. 7484, Rev. C. 1907; re-en. Sec. 10120, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1430; re-en. Sec. 10120, R.C.M. 1935; R.C.M. 1947, 91-2001(part).

72-10-106. En. Sec. 109, p. 264, L. 1877; re-en. Sec. 109, 2nd Div. Rev. Stat. 1879; re-en. Sec. 109, 2nd Div. Comp. Stat. 1887; amd. Sec. 2530, C. Civ. Proc. 1895; en. Sec. 1, p. 244, L. 1897; re-en. Sec. 7484, Rev. C. 1907; re-en. Sec. 10120, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1430; re-en. Sec. 10120, R.C.M. 1935; R.C.M. 1947, 91-2001(part).

72-10-107. En. Sec. 317, p. 322, L. 1877; re-en. Sec. 317, 2nd Div. Rev. Stat. 1879; re-en. Sec. 317, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2913, C. Civ. Proc. 1895; re-en. Sec. 7704, Rev. C. 1907; re-en. Sec. 10358, R.C.M. 1921; re-en. Sec. 10358, R.C.M. 1935; R.C.M. 1947, 91-4304; amd. Sec. 10, Ch. 6, L. 1979.

72-10-108. En. Sec. 318, p. 322, L. 1877; re-en. Sec. 318, 2nd Div. Rev. Stat. 1879; re-en. Sec. 318, 2nd Div. Comp. Stat. 1887;

re-en. Sec. 2914, C. Civ. Proc. 1895; re-en. Sec. 7705, Rev. C. 1907; amd. Sec. 1, Ch. 40, L. 1921; re-en. Sec. 10359, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1707; re-en. Sec. 10359, R.C.M. 1935; R.C.M. 1947, 91-4305.

72-10-109. En. Sec. 319, p. 323, L. 1877; re-en. Sec. 319, 2nd Div. Rev. Stat. 1879; re-en. Sec. 319, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2915, C. Civ. Proc. 1895; re-en. Sec. 7706, Rev. C. 1907; re-en. Sec. 10360, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1708; re-en. Sec. 10360, R.C.M. 1935; R.C.M. 1947, 91-4306; amd. Sec. 11, Ch. 6, L. 1979.

72-10-110. En. Secs. 320, 322, p. 323, L. 1877; re-en. Secs. 320, 322, 2nd Div. Rev. Stat. 1879; re-en. Secs. 320, 322, 2nd Div. Comp. Stat. 1887; re-en. Secs. 2916, 2918, C. Civ. Proc. 1895; re-en. Secs. 7707, 7709, Rev. C. 1907; re-en. Secs. 10361, 10363, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1709, 1711; re-en. Secs. 10361, 10363, R.C.M. 1935; R.C.M. 1947, 91-4307, 91-4309; amd. Sec. 12, Ch. 6, L. 1979.

72-10-111. En. Sec. 331, p. 326, L. 1877; re-en. Sec. 331, 2nd Div. Rev. Stat. 1879; re-en. Sec. 331, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2927, C. Civ. Proc. 1895; re-en. Sec. 7718, Rev. C. 1907; re-en. Sec. 10372, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1720; re-en. Sec. 10372, R.C.M. 1935; R.C.M. 1947, 91-4318; amd. Sec. 13, Ch. 6, L. 1979.

72-10-112. En. Sec. 332, p. 326, L. 1877; re-en. Sec. 332, 2nd Div. Rev. Stat. 1879; re-en. Sec. 332, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2928, C. Civ. Proc. 1895; re-en. Sec. 7719, Rev. C. 1907; re-en. Sec. 10373, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1721; re-en. Sec. 10372, R.C.M. 1935; R.C.M. 1947, 91-4319.

72-10-113. En. Sec. 326, p. 324, L. 1877; re-en. Sec. 326, 2nd Div. Rev. Stat. 1879; re-en. Sec. 326, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2922, C. Civ. Proc. 1895; re-en. Sec. 7713, Rev. C. 1907; re-en. Sec. 10367, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1715; re-en. Sec. 10367, R.C.M. 1935; R.C.M. 1947, 91-4313.

72-10-201. En. Sec. 321, p. 323, L. 1877; re-en. Sec. 321, 2nd Div. Rev. Stat. 1879; re-en. Sec. 321, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2917, C. Civ. Proc. 1895; re-en. Sec. 7708, Rev. C. 1907; re-en. Sec. 10362, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1710; re-en. Sec. 10362, R.C.M. 1935; R.C.M. 1947, 91-4308.

72-10-202. En. Sec. 316, p. 322, L. 1877; re-en. Sec. 316, 2nd Div. Rev. Stat. 1879; re-en. Sec. 316, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2912, C. Civ. Proc. 1895; re-en. Sec. 7703, Rev. C. 1907; re-en. Sec. 10357, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1706; re-en. Sec. 10357, R.C.M. 1935; R.C.M. 1947, 91-4303; amd. Sec. 14, Ch. 6, L. 1979.

72-10-203. En. Sec. 323, p. 324, L. 1877; re-en. Sec. 323, 2nd Div. Rev. Stat. 1879; re-en. Sec. 323, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2919, C. Civ. Proc. 1895; re-en. Sec. 7710, Rev. C. 1907; re-en. Sec. 10364, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1712; re-en. Sec. 10364, R.C.M. 1935; R.C.M. 1947, 91-4310.

72-10-204. En. Sec. 315, p. 322, L. 1877; re-en. Sec. 315, 2nd Div. Rev. Stat. 1879; re-en. Sec. 315, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2911, C. Civ. Proc. 1895; re-en. Sec. 7702, Rev. C. 1907; re-en. Sec. 10356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1705; re-en. Sec. 10356, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1947; R.C.M. 1947, 91-4302.

CHAPTER 11

INTESTATE SUCCESSION AND WILLS SUPPLEMENTARY PROVISIONS

Part 1 — Intestate Succession

72-11-101. Degrees of kinship — how computed.
72-11-102. Types of kinship — lineal and collateral.
72-11-103. Computation of degrees in lineal kinship.
72-11-104. Computation of degrees in collateral kinship.
72-11-105. Repealed.

Part 2 — Wills—Execution and Revocation (Repealed. Sec. 134, Ch. 494, L. 1993)

Part 3 — Wills—Construction and Operation (Repealed)

72-11-301 through 72-11-333. Repealed.
72-11-334. Repealed.

Part 1
Intestate Succession

72-11-101. Degrees of kinship — how computed. The degree of kinship is established by the number of generations, and each generation is called a degree.

History: **En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1855, Civ. C. 1895; re-en. Sec. 4823, Rev. C. 1907; re-en. Sec. 7076, R.C.M. 1921; Cal. Civ. C. Sec. 1389; re-en. Sec. 7076, R.C.M. 1935; R.C.M. 1947, 91-406; amd. Sec. 76, Ch. 494, L. 1993.**

Cross-References

Relationship by affinity, 1-1-219.

72-11-102. Types of kinship — lineal and collateral. There are two types of kinship, lineal and collateral. Lineal kinship, or the direct line of consanguinity, is the relationship between persons, one of whom is a descendant of the other. Collateral kinship is the relationship between people who descend from a common ancestor but are not in a direct line.

History: **En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1856, Civ. C. 1895; re-en. Sec. 4824, Rev. C. 1907; re-en. Sec. 7077, R.C.M. 1921; Cal. Civ. C. Sec. 1390; re-en. Sec. 7077, R.C.M. 1935; R.C.M. 1947, 91-407; amd. Sec. 77, Ch. 494, L. 1993.**

Cross-References

Representation of heirs, 72-2-116.

Kindred of half blood, 72-2-117.

Share of individual related to decedent through two lines, 72-2-123.

72-11-103. Computation of degrees in lineal kinship. The degree of lineal kinship of two persons is computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins. The child is, with regard to the parent, in the first degree; the grandchild is, with regard to the grandparent, in the second degree; and vice versa as to the parent and grandparent with regard to their respective children and grandchildren.

History: **En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1857, Civ. C. 1895; re-en. Sec. 4825, Rev. C. 1907; re-en. Sec. 7078, R.C.M. 1921; Cal. Civ. C. Sec. 1391; re-en. Sec. 7078, R.C.M. 1935; R.C.M. 1947, 91-408; amd. Sec. 134, Ch. 370, L. 1987; amd. Sec. 78, Ch. 494, L. 1993.**

72-11-104. Computation of degrees in collateral kinship. The degree of collateral kinship of two persons is computed by commencing with one of the persons, ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins. Siblings are related to each other in the second degree, uncle and niece are related to each other in the third degree, and first cousins are related to each other in the fourth degree.

History: **En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1858, Civ. C. 1895; re-en. Sec. 4826, Rev. C. 1907; re-en. Sec. 7079, R.C.M. 1921; Cal. Civ. C. Sec. 1392; re-en. Sec. 7079, R.C.M. 1935; R.C.M. 1947, 91-409; amd. Sec. 79, Ch. 494, L. 1993.**

72-11-105. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Secs. 536-557, pp. 366-370, L. 1877; re-en. Secs. 536-557, 2nd Div. Rev. Stat. 1879; re-en. Secs. 536-557, 2nd Div. Comp. Stat. 1887; en. Sec. 1859, Civ. C. 1895; re-en. Sec. 4827, Rev. C. 1907; re-en. Sec. 7080, R.C.M. 1921; Cal. Civ. C. Sec. 1393; re-en. Sec. 7080, R.C.M. 1935; re-en. Sec. 7080, R.C.M. 1935; R.C.M. 1947, 91-410.

Part 2

Wills — Execution and Revocation (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-11-201. En. Sec. 441, p. 349, L. 1877; re-en. Sec. 441, 2nd Div. Rev. Stat. 1879; re-en. Sec. 441, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1726, Civ. C. 1895; re-en. Sec. 4729, Rev. C. 1907; re-en. Sec. 6983, R.C.M. 1921; Cal. Civ. C. Sec. 1279; Field Civ. C. Sec. 548; re-en. Sec. 6983, R.C.M. 1935; R.C.M. 1947, 91-110.

72-11-202. En. Sec. 443, p. 350, L. 1877; re-en. Sec. 443, 2nd Div. Rev. Stat. 1879; re-en. Sec. 443, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1728, Civ. C. 1895; re-en. Sec. 4731, Rev. C. 1907; re-en. Sec. 6985, R.C.M. 1921; Cal. Civ. C. Sec. 1281; Field Civ. C. Sec. 549; re-en. Sec. 6985, R.C.M. 1935; R.C.M. 1947, 91-112.

72-11-203. En. Sec. 5, p. 556, Cod. Stat. 1871; re-en. Sec. 442, p. 350, L. 1877; re-en. Sec. 442, 2nd Div. Rev. Stat. 1879; re-en. Sec. 442, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1727, Civ. C. 1895; re-en. Sec. 4730, Rev. C. 1907; re-en. Sec. 6984, R.C.M. 1921; Cal. Civ. C. Sec. 1280; re-en. Sec. 6984, R.C.M. 1935; R.C.M. 1947, 91-111.

72-11-204. En. Sec. 464, p. 354, L. 1877; re-en. Sec. 464, 2nd Div. Rev. Stat. 1879; re-en. Sec. 464, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1749, Civ. C. 1895; re-en. Sec. 4752, Rev. C. 1907; re-en. Sec. 7006, R.C.M. 1921; Cal. Civ. C. Sec. 1304; Field Civ. C. Sec. 572; re-en. Sec. 7006, R.C.M. 1935; R.C.M. 1947, 91-133.

72-11-205. En. Sec. 455, p. 352, L. 1877; re-en. Sec. 455, 2nd Div. Rev. Stat. 1879; re-en. Sec. 455, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1740, Civ. C. 1895; re-en. Sec. 4743, Rev. C. 1907; re-en. Sec. 6997, R.C.M. 1921; Field Civ. C. Sec. 564; re-en. Sec. 6997, R.C.M. 1935; R.C.M. 1947, 91-124.

Part 3

Wills — Construction and Operation (Repealed)

72-11-301 through 72-11-333. Repealed. Sec. 134, Ch. 494, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

72-11-301. En. Sec. 476, p. 356, L. 1877; re-en. Sec. 476, 2nd Div. Rev. Stat. 1879; re-en. Sec. 476, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1772, Civ. C. 1895; re-en. Sec. 4765, Rev. C. 1907; re-en. Sec. 7018, R.C.M. 1921; Cal. Civ. C. Sec. 1319; Field Civ. C. Sec. 581; re-en. Sec. 7018, R.C.M. 1935; R.C.M. 1947, 91-203.

72-11-302. En. Sec. 481, p. 357, L. 1877; re-en. Sec. 481, 2nd Div. Rev. Stat. 1879; re-en. Sec. 481, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1777, Civ. C. 1895; re-en. Sec. 4770, Rev. C. 1907; re-en. Sec. 7023, R.C.M. 1921; Cal. Civ. C. Sec. 1324; Field Civ. C. Sec. 586; re-en. Sec. 7023, R.C.M. 1935; R.C.M. 1947, 91-208.

72-11-303. En. Sec. 482, p. 357, L. 1877; re-en. Sec. 482, 2nd Div. Rev. Stat. 1879; re-en. Sec. 482, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1778, Civ. C. 1895; re-en. Sec. 4771, Rev. C. 1907; re-en. Sec. 7024, R.C.M. 1921; Cal. Civ. C. Sec. 1325; Field Civ. C. Sec. 587; re-en. Sec. 7024, R.C.M. 1935; R.C.M. 1947, 91-209.

72-11-304. En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13.

72-11-305. En. Sec. 480, p. 356, L. 1877; re-en. Sec. 480, 2nd Div. Rev. Stat. 1879; re-en. Sec. 480, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1776, Civ. C. 1895; re-en. Sec. 4769, Rev. C. 1907; re-en. Sec. 7022, R.C.M. 1921; Cal. Civ. C. Sec. 1323; Field Civ. C. Sec. 585; re-en. Sec. 7022, R.C.M. 1935; R.C.M. 1947, 91-207.

72-11-306. En. Sec. 477, p. 356, L. 1877; re-en. Sec. 477, 2nd Div. Rev. Stat. 1879; re-en. Sec. 477, 2nd Div. comp. Stat. 1887; re-en. Sec. 1773, Civ. C. 1895; re-en. Sec. 4766, Rev. C. 1907; re-en. Sec. 7019, R.C.M. 1921; Cal. Civ. C. Sec. 1320; Field Civ. C. Sec. 582; re-en. Sec. 7019, R.C.M. 1935; R.C.M. 1947, 91-204.

72-11-307. En. Sec. 478, p. 356, L. 1877; re-en. Sec. 478, 2nd Div. Rev. Stat. 1879; re-en. Sec. 478, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1774, Civ. C. 1895; re-en. Sec. 4767, Rev. C. 1907; re-en. Sec. 7020, R.C.M. 1921; Cal. Civ. C. Sec. 1321; Field Civ. C. Sec. 583; re-en. Sec. 7020, R.C.M. 1935; R.C.M. 1947, 91-205.

72-11-308. En. Sec. 479, p. 356, L. 1877; re-en. Sec. 479, 2nd Div. Rev. Stat. 1879; re-en. Sec. 479, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1775, Civ. C. 1895; re-en. Sec. 4768, Rev. C. 1907; re-en. Sec. 7021, R.C.M. 1921; Cal. Civ. C. Sec. 1322; Field Civ. C. Sec. 584; re-en. Sec. 7021, R.C.M. 1935; R.C.M. 1947, 91-206.

72-11-309. En. Sec. 484, p. 357, L. 1877; re-en. Sec. 484, 2nd Div. Rev. Stat. 1879; re-en. Sec. 484, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1780, Civ. C. 1895; re-en. Sec. 4773, Rev. C. 1907; re-en. Sec. 7026, R.C.M. 1921; Cal. Civ. C. Sec. 1327; Field Civ. C. Sec. 589; re-en. Sec. 7026, R.C.M. 1935; R.C.M. 1947, 91-211.

72-11-310. En. Sec. 485, p. 357, L. 1877; re-en. Sec. 485, 2nd Div. Rev. Stat. 1879; re-en. Sec. 485, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1781, Civ. C. 1895; re-en. Sec. 4774, Rev. C. 1907; re-en. Sec. 7027, R.C.M. 1921; Cal. Civ. C. Sec. 1328; Field Civ. C. Sec. 590; re-en. Sec. 7027, R.C.M. 1935; R.C.M. 1947, 91-212.

72-11-311. En. Sec. 486, p. 357, L. 1877; re-en. Sec. 486, 2nd Div. Rev. Stat. 1879; re-en. Sec. 486, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1782, Civ. C. 1895; re-en. Sec. 4775, Rev. C. 1907; re-en. Sec. 7028, R.C.M. 1921; Cal. Civ. C. Sec. 1329; Field Civ. C. Sec. 591; re-en. Sec. 7028, R.C.M. 1935; R.C.M. 1947, 91-213.

72-11-312. En. Sec. 493, p. 358, L. 1877; re-en. Sec. 493, 2nd Div. Rev. Stat. 1879; re-en. Sec. 493, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1789, Civ. C. 1895; re-en. Sec. 4782, Rev. C. 1907; re-en. Sec. 7035, R.C.M. 1921; Cal. Civ. C. Sec. 1336; Field Civ. C. Sec. 598; re-en. Sec. 7035, R.C.M. 1935; R.C.M. 1947, 91-220.

72-11-313. En. Sec. 497, p. 359, L. 1877; re-en. Sec. 497, 2nd Div. Rev. Stat. 1879; re-en. Sec. 497, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1793, Civ. C. 1895; re-en. Sec. 4786, Rev. C. 1907; re-en. Sec. 7039, R.C.M. 1921; Cal. Civ. C. Sec. 1340; Based on Field Civ. C. Sec. 602; re-en. Sec. 7039, R.C.M. 1935; R.C.M. 1947, 91-224.

72-11-314. En. Sec. 502, p. 360, L. 1877; re-en. Sec. 502, 2nd Div. Rev. Stat. 1879; re-en. Sec. 502, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1798, Civ. C. 1895; re-en. Sec. 4791, Rev. C. 1907; re-en. Sec. 7044, R.C.M. 1921; Cal. Civ. C. Sec. 1345; Field Civ. C. Sec. 607; re-en. Sec. 7044, R.C.M. 1935; R.C.M. 1947, 91-229.

72-11-315. En. Sec. 503, p. 360, L. 1877; re-en. Sec. 503, 2nd Div. Rev. Stat. 1879; re-en. Sec. 503, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1799, Civ. C. 1895; re-en. Sec. 4792, Rev. C. 1907; re-en. Sec. 7045, R.C.M. 1921; Cal. Civ. C. Sec. 1346; Field Civ. C. Sec. 608; re-en. Sec. 7045, R.C.M. 1935; R.C.M. 1947, 91-230.

72-11-316. En. Sec. 504, p. 360, L. 1877; re-en. Sec. 504, 2nd Div. Rev. Stat. 1879; re-en. Sec. 504, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1800, Civ. C. 1895; re-en. Sec. 4793, Rev. C. 1907; re-en. Sec. 7046, R.C.M. 1921; Cal. Civ. C. Sec. 1347; Field Civ. C. Sec. 609; re-en. Sec. 7046, R.C.M. 1935; R.C.M. 1947, 91-231.

72-11-317. En. Sec. 505, p. 360, L. 1877; re-en. Sec. 505, 2nd Div. Rev. Stat. 1879; re-en. Sec. 505, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1801, Civ. C. 1895; re-en. Sec. 4794, Rev. C. 1907; re-en. Sec. 7047, R.C.M. 1921; Cal. Civ. C. Sec. 1348; Field Civ. C. Sec. 610; re-en. Sec. 7047, R.C.M. 1935; R.C.M. 1947, 91-232.

72-11-318. En. Sec. 506, p. 360, L. 1877; re-en. Sec. 506, 2nd Div. Rev. Stat. 1879; re-en. Sec. 506, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1802, Civ. C. 1895; re-en. Sec. 4795, Rev. C. 1907; re-en. Sec. 7048, R.C.M. 1921; Cal. Civ. C. Sec. 1349; Field Civ. C. Sec. 611; re-en. Sec. 7048, R.C.M. 1935; R.C.M. 1947, 91-233.

72-11-319. En. Sec. 507, p. 360, L. 1877; re-en. Sec. 507, 2nd Div. Rev. Stat. 1879; re-en. Sec. 507, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1803, Civ. C. 1895; re-en. Sec. 4796, Rev. C. 1907; re-en. Sec. 7049, R.C.M. 1921; Cal. Civ. C. Sec. 1350; Field Civ. C. Sec. 612; re-en. Sec. 7049, R.C.M. 1935; R.C.M. 1947, 91-234.

72-11-320. En. Sec. 494, p. 358, L. 1877; re-en. Sec. 494, 2nd Div. Rev. Stat. 1879; re-en. Sec. 494, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1790, Civ. C. 1895; re-en. Sec. 4783, Rev. C. 1907; re-en. Sec. 7036, R.C.M. 1921; Cal. Civ. C. Sec. 1337; Field Civ. C. Sec. 599; re-en. Sec. 7036, R.C.M. 1935; R.C.M. 1947, 91-221.

72-11-321. En. Sec. 496, p. 359, L. 1877; re-en. Sec. 496, 2nd Div. Rev. Stat. 1879; re-en. Sec. 496, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1792, Civ. C. 1895; re-en. Sec. 4785, Rev. C. 1907; re-en. Sec. 7038, R.C.M. 1921; Cal. Civ. C. Sec. 1339; Field Civ. C. Sec. 601; re-en. Sec. 7038, R.C.M. 1935; R.C.M. 1947, 91-223.

72-11-322. En. Sec. 495, p. 359, L. 1877; re-en. Sec. 495, 2nd Div. Rev. Stat. 1879; re-en. Sec. 495, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1791, Civ. C. 1895; re-en. Sec. 4784, Rev. C. 1907; re-en. Sec. 7037, R.C.M. 1921; Cal. Civ. C. Sec. 1338; Field Civ. C. Sec. 600; re-en. Sec. 7037, R.C.M. 1935; R.C.M. 1947, 91-222.

72-11-323 through 72-11-330 reserved.

72-11-331. En. Sec. 499, p. 359, L. 1877; re-en. Sec. 499, 2nd Div. Rev. Stat. 1879; re-en. Sec. 499, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1795, Civ. C. 1895; re-en. Sec. 4788, Rev. C. 1907; re-en. Sec. 7041, R.C.M. 1921; Cal. Civ. C. Sec. 1342; Field Civ. C. Sec. 604; re-en. Sec. 7041, R.C.M. 1935; R.C.M. 1947, 91-226.

72-11-332. En. Sec. 501, p. 359, L. 1877; re-en. Sec. 501, 2nd Div. Rev. Stat. 1879; re-en. Sec. 501, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1797, Civ. C. 1895; re-en. Sec. 4790, Rev. C. 1907; re-en. Sec. 7043, R.C.M. 1921; Cal. Civ. C. Sec. 1344; Field Civ. C. Sec. 606; re-en. Sec. 7043, R.C.M. 1935; R.C.M. 1947, 91-228.

72-11-333. En. Sec. 2, p. 555, Cod. Stat. 1871; re-en. Sec. 471, p. 355, L. 1877; re-en. Sec. 471, 2nd Div. Rev. Stat. 1879; re-en. Sec. 471, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1756, Civ. C. 1895; re-en. Sec. 4759, Rev. C. 1907; re-en. Sec. 7013, R.C.M. 1921; Cal. Civ. C. Sec. 1311; re-en. Sec. 7013, R.C.M. 1935; R.C.M. 1947, 91-140.

72-11-334. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1, p. 69, L. 1893; re-en. Sec. 1759, Civ. C. 1895; re-en. Sec. 4762, Rev. C. 1907; re-en. Sec. 7015, R.C.M. 1921; Cal. Civ. C. Sec. 1313; re-en. Sec. 7015, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1945; R.C.M. 1947, 91-142.

CHAPTER 12

PROBATE AND ADMINISTRATION SUPPLEMENTARY PROVISIONS

Part 1 — General Provisions
(Repealed)

72-12-101. Repealed.
72-12-102. Repealed.
72-12-103. Repealed.
72-12-104. Repealed.

Part 2 — Will Contest—Procedure

72-12-201 through 72-12-205. Repealed.
72-12-206. Fees and expenses — by whom paid.

Part 3 — Lost Wills—Procedure
(Repealed. Sec. 134, Ch. 494, L. 1993)

Part 4 — Handwriting Analysis

72-12-401. Petition for handwriting analysis.
72-12-402. Court to determine necessity of procedure and qualifications of expert.
72-12-403. Clerk to mail will to expert — notice.
72-12-404. Expert to return will to clerk.
72-12-405. Expert to mail report to petitioner.
72-12-406. Petitioner to pay all fees.
72-12-407. Report property of petitioner unless interested party shares fees.

Part 5 — Personal Representative
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Part 7 — Powers and Duties of Surviving Partner
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Part 9 — Special Provisions Relating to Distribution
(Repealed. Sec. 134, Ch. 494, L. 1993)

Part 10 — Closing Estates—Accounting
(Repealed. Sec. 134, Ch. 494, L. 1993)

Part 1
General Provisions
(Repealed)

72-12-101. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2900, C. Civ. Proc. 1895; re-en. Sec. 7698, Rev. C. 1907; re-en. Sec. 10352, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1699; re-en. Sec. 10352, R.C.M. 1935; amd. Sec. 2, Ch. 24, L. 1969; R.C.M. 1947, 91-4201.

72-12-102. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2901, C. Civ. Proc. 1895; re-en. Sec. 7699, Rev. C. 1907; re-en. Sec. 10353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1700; re-en. Sec. 10353, R.C.M. 1935; R.C.M. 1947, 91-4202.

72-12-103. Repealed. Sec. 220, Ch. 685, L. 1989.

History: En. Sec. 2902, C. Civ. Proc. 1895; re-en. Sec. 7700, Rev. C. 1907; re-en. Sec. 10354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1701; re-en. Sec. 10354, R.C.M. 1935; R.C.M. 1947, 91-4203.

72-12-104. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Secs. 509-530, pp. 360-363, L. 1877; re-en. Secs. 509-530, 2nd Div. Rev. Stat. 1879; re-en. Secs. 509-530, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1828, Civ. C. 1895; re-en. Sec. 4806, Rev. C. 1907; re-en. Sec. 7059, R.C.M. 1921; Cal. Civ. C. Sec. 1365; Field Civ. C. Sec. 622; re-en. Sec. 7059, R.C.M. 1935; R.C.M. 1947, 91-309.

Part 2
Will Contest — Procedure

72-12-201 through 72-12-205. Repealed. Sec. 134, Ch. 494, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

72-12-201. En. Sec. 21, p. 245, L. 1877; re-en. Sec. 21, 2nd Div. Rev. Stat. 1879; re-en. Sec. 21, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2341, C. Civ. Proc. 1895; re-en. Sec. 7398, Rev. C. 1907; re-en. Sec. 10033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1313; re-en. Sec. 10033, R.C.M. 1935; R.C.M. 1947, 91-902.

72-12-202. En. Sec. 22, p. 245, L. 1877; re-en. Sec. 22, 2nd Div. Rev. Stat. 1879; re-en. Sec. 22, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2342, C. Civ. Proc. 1895; re-en. Sec. 7399, Rev. C. 1907; re-en. Sec. 10034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1314; re-en. Sec. 10034, R.C.M. 1935; R.C.M. 1947, 91-903.

72-12-203. (1)En. Sec. 24, p. 246, L. 1877; re-en. Sec. 24, 2nd Div. Rev. Stat. 1879; re-en. Sec. 24, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2344, C. Civ. Proc. 1895; re-en. Sec. 7401, Rev. C. 1907; re-en. Sec. 10036, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1316; re-en. Sec. 10036, R.C.M. 1935; Sec. 91-905, R.C.M. 1947; (2)En. Sec. 26, p. 246, L. 1877; re-en. Sec. 26, p. 197, 2nd Div. Rev. Stat. 1879; re-en. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 2346, C. Civ. Proc. 1895; re-en. Sec. 7403, Rev. C. 1907; re-en. Sec. 10038, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1318; re-en. Sec. 10038, R.C.M. 1935; Sec. 91-907, R.C.M. 1947; R.C.M. 1947, 91-905, 91-907(part).

72-12-204. En. Sec. 25, p. 246, L. 1877; re-en. Sec. 25, 2nd Div. Rev. Stat. 1879; re-en. Sec. 25, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2345, C. Civ. Proc. 1895; re-en. Sec. 7402, Rev. C. 1907; re-en. Sec. 10037, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1317; re-en. Sec. 10037, R.C.M. 1935; R.C.M. 1947, 91-906.

72-12-205. En. Sec. 26, p. 246, L. 1877; re-en. Sec. 26, p. 197, 2nd Div. Rev. Stat. 1879; re-en. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 26, 2nd Div. Comp. Stat. 1887; amd. Sec. 2346, C. Civ. Proc. 1895; re-en. Sec. 7403, Rev. C. 1907; re-en. Sec. 10038, R.C.M. 1921; Cal. C.

Civ. Proc. Sec. 1318; re-en. Sec. 10038, R.C.M. 1935; R.C.M. 1947, 91-907(part).

72-12-206. Fees and expenses — by whom paid. When the validity or probate of a will is contested through court action, the attorney fees and costs, as provided in 25-10-201, incurred in defending the validity or probate of the will must be paid by the party contesting the validity or probate of the will if the will in probate is confirmed. If the probate is revoked, costs, as provided in 25-10-201, but not attorney fees, must be paid by the party who resisted the revocation or out of the property of the decedent, as the court directs.

History: En. Sec. 35, p. 248, L. 1877; re-en. Sec. 35, 2nd Div. Rev. Stat. 1879; re-en. Sec. 35, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2365, C. Civ. Proc. 1895; re-en. Sec. 7412, Rev. C. 1907; re-en. Sec. 10047, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1332; re-en. Sec. 10047, R.C.M. 1935; amd. Sec. 16, Ch. 365, L. 1974; R.C.M. 1947, 91-1106; amd. Sec. 80, Ch. 494, L. 1993.

Part 3

Lost Wills — Procedure (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-301. En. Sec. 39, p. 249, L. 1877; re-en. Sec. 39, 2nd Div. Rev. Stat. 1879; re-en. Sec. 39, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2372, C. Civ. Proc. 1895; re-en. Sec. 7416, Rev. C. 1907; re-en. Sec. 10051, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1340; re-en. Sec. 10051, R.C.M. 1935; R.C.M. 1947, 91-1203.

72-12-302. En. Sec. 40, p. 249, L. 1877; re-en. Sec. 40, 2nd Div. Rev. Stat. 1879; re-en. Sec. 40, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2373, C. Civ. Proc. 1895; re-en. Sec. 7417, Rev. C. 1907; re-en. Sec. 10052, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1341; re-en. Sec. 10052, R.C.M. 1935; R.C.M. 1947, 91-1204.

Part 4

Handwriting Analysis

Part Cross-References

Testimony by experts, Rule 702, M.R.Ev. (see Title 26, ch. 10).

72-12-401. Petition for handwriting analysis. In any proceeding involving the probate, either contested or uncontested, of a will in which the signature of the testator or of any witness is an issue, any party to the proceeding may file with the court a verified petition requesting that the original will be delivered to a handwriting expert residing and having his place of business outside the state or outside the county for an examination of any of the signatures on the will.

History: En. Sec. 1, Ch. 13, L. 1974; R.C.M. 1947, 91-813.

72-12-402. Court to determine necessity of procedure and qualifications of expert. The court, upon notice and hearing, shall determine whether the procedure is justified by the circumstances of the case and whether the handwriting expert specified in the petition is a qualified professional handwriting expert.

History: En. Sec. 2, Ch. 13, L. 1974; R.C.M. 1947, 91-814.

72-12-403. Clerk to mail will to expert — notice. If the court grants the petition for delivery of the original will to a qualified handwriting expert residing and having his place of business outside the county or state, the clerk of court shall make at least two photocopies of the original will, which photocopies shall remain in the custody of the clerk of court. The clerk shall mail the original will by registered or certified mail, return receipt requested, to the handwriting expert specified in the order and shall give notice of the mailing by mailing copies of the order to each of the parties to the proceeding and to the handwriting expert.

History: **En. Sec. 3, Ch. 13, L. 1974; R.C.M. 1947, 91-815.**

72-12-404. Expert to return will to clerk. Upon completion of his analysis, the handwriting expert shall return the original will to the clerk of court by registered or certified mail, return receipt requested.

History: **En. Sec. 4, Ch. 13, L. 1974; R.C.M. 1947, 91-816.**

72-12-405. Expert to mail report to petitioner. Unless the court orders another disposition of the written report, the handwriting expert, upon completion of his analysis, shall mail his written report to the party who requested it.

History: **En. Sec. 5, Ch. 13, L. 1974; R.C.M. 1947, 91-817.**

Cross-References

Testimony by experts, Rule 702, M.R.Ev. (see Title 26, ch. 10).

72-12-406. Petitioner to pay all fees. All fees and expenses arising from the procedure outlined in this part, including the cost of photocopying the will, the expense of all registered or certified mailings, and the handwriting expert's fee, shall be paid by the party requesting the handwriting analysis.

History: **En. Sec. 6, Ch. 13, L. 1974; R.C.M. 1947, 91-818.**

Cross-References

Witness fees — expert witnesses, 26-2-505.

72-12-407. Report property of petitioner unless interested party shares fees. Unless the court otherwise orders, the handwriting expert's written report shall be the sole and exclusive property of the party requesting it. However, upon demand and the payment of his pro rata share of the fees and costs of the handwriting expert, as shall be determined by the court, any interested party may obtain a certified copy of the written report.

History: **En. Sec. 7, Ch. 13, L. 1974; R.C.M. 1947, 91-819.**

Part 5

Personal Representative
(Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-501. En. Sec. 57, p. 254, L. 1877; re-en. Sec. 57, 2nd Div. Rev. Stat. 1879; re-en. Sec. 57, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2432, C. Civ. Proc. 1895; re-en. Sec. 7434, Rev. C. 1907; re-en. Sec. 10070, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1367; re-en. Sec. 10070, R.C.M. 1935; R.C.M. 1947, 91-1403.

72-12-502. En. Sec. 166, p. 282, L. 1877; re-en. Sec. 166, 2nd Div. Rev. Stat. 1879; re-en. Sec. 166, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2619, C. Civ. Proc. 1895; re-en. Sec. 7541, Rev. C. 1907; re-en. Sec. 10190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1509; re-en. Sec. 10190, R.C.M. 1935; R.C.M. 1947, 91-2721.

72-12-503. En. Sec. 231, p. 301, L. 1877; re-en. Sec. 231, 2nd Div. Rev. Stat. 1879; re-en. Sec. 231, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2736, C. Civ. Proc. 1895; re-en. Sec. 7609, Rev. C. 1907; re-en. Sec. 10263, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1587; re-en. Sec. 10263, R.C.M. 1935; R.C.M. 1947, 91-3207.

Part 6

Third Parties Handling Estate Property — Recovery — Account (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-601. En. Sec. 129, p. 270, L. 1877; re-en. Sec. 129, 2nd Div. Rev. Stat. 1879; re-en. Sec. 129, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2570, C. Civ. Proc. 1895; re-en. Sec. 7504, Rev. C. 1907; re-en. Sec. 10140, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1458; re-en. Sec. 10140, R.C.M. 1935; amd. Sec. 66, Ch. 359, L. 1977; R.C.M. 1947, 91-2301.

72-12-602. En. Sec. 130, p. 270, L. 1877; re-en. Sec. 130, 2nd Div. Rev. Stat. 1879; re-en. Sec. 130, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2571, C. Civ. Proc. 1895; re-en. Sec. 7505, Rev. C. 1907; re-en. Sec. 10141, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1459; re-en. Sec. 10141, R.C.M. 1935; amd. Sec. 67, Ch. 359, L. 1977; R.C.M. 1947, 91-2302.

72-12-603. En. Sec. 131, p. 271, L. 1877; re-en. Sec. 131, 2nd Div. Rev. Stat. 1879; re-en. Sec. 131, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2572, C. Civ. Proc. 1895; re-en. Sec. 7506, Rev. C. 1907; re-en. Sec. 10142, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1460; re-en. Sec. 10142, R.C.M. 1935; amd. Sec. 68, Ch. 359, L. 1977; R.C.M. 1947, 91-2303(part).

72-12-604. En. Sec. 131, p. 271, L. 1877; re-en. Sec. 131, 2nd Div. Rev. Stat. 1879; re-en. Sec. 131, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2572, C. Civ. Proc. 1895; re-en. Sec. 7506, Rev. C. 1907; re-en. Sec. 10142, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1460; re-en. Sec. 10142, R.C.M. 1935; amd. Sec. 68, Ch. 359, L. 1977; R.C.M. 1947, 91-2303(part).

72-12-605. En. Sec. 132, p. 271, L. 1877; re-en. Sec. 132, 2nd Div. Rev. Stat. 1879; re-en. Sec. 132, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2573, C. Civ. Proc. 1895; re-en. Sec. 7507, Rev. C. 1907; re-en. Sec. 10143, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1461; re-en. Sec. 10143, R.C.M. 1935; R.C.M. 1947, 91-2304.

Part 7

Powers and Duties of Surviving Partner (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-701. En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-702. En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-703. En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

72-12-704. En. Sec. 229, p. 301, L. 1877; re-en. Sec. 229, 2nd Div. Rev. Stat. 1879; re-en. Sec. 229, 2nd Div. Comp. Stat. 1887; amd. Sec. 1, p. 146, L. 1889; amd. Sec. 2734, C. Civ. Proc. 1895; re-en. Sec. 7607, Rev. C. 1907; re-en. Sec. 10261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1585; re-en. Sec. 10261, R.C.M. 1935; R.C.M. 1947, 91-3205(part).

Part 8

Claims Against Estate (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-801. En. Sec. 152, p. 277, L. 1877; re-en. Sec. 152, 2nd Div. Rev. Stat. 1879; re-en. Sec. 152, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2605, C. Civ. Proc. 1895; re-en. Sec. 7527, Rev. C. 1907; re-en. Sec. 10175, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1495; re-en. Sec. 10175, R.C.M. 1935; amd. Sec. 9, Ch. 263, L. 1975; R.C.M. 1947, 91-2706.

72-12-802. En. Sec. 158, p. 279, L. 1877; re-en. Sec. 158, 2nd Div. Rev. Stat. 1879; re-en. Sec. 158, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2611, C. Civ. Proc. 1895; re-en. Sec. 7533, Rev. C. 1907; re-en. Sec. 10182, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1501; re-en. Sec. 10182, R.C.M. 1935; R.C.M. 1947, 91-2713; amd. Sec. 15, Ch. 6, L. 1979.

72-12-803. En. Sec. 170, p. 283, L. 1877; re-en. Sec. 170, 2nd Div. Rev. Stat. 1879; re-en. Sec. 170, 2nd Div. Comp. Stat. 1887; amd. Sec. 2623, C. Civ. Proc. 1895; re-en. Sec. 7545, Rev. C. 1907; re-en. Sec. 10194, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1513; re-en. Sec. 10194, R.C.M. 1935; amd. Sec. 10, Ch. 263, L. 1975; R.C.M. 1947, 91-2725.

Part 9

Special Provisions Relating to Distribution (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-901. En. Sec. 123, p. 268, L. 1877; re-en. Sec. 123, 2nd Div. Rev. Stat. 1879; re-en. Sec. 123, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2555, C. Civ. Proc. 1895; re-en. Sec. 7498, Rev. C. 1907; re-en. Sec. 10134, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1448; re-en. Sec. 10134, R.C.M. 1935; R.C.M. 1947, 91-2206.

Part 10

Closing Estates — Accounting (Repealed. Sec. 134, Ch. 494, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

72-12-1001. En. Sec. 248, p. 305, L. 1877; re-en. Sec. 248, 2nd Div. Rev. Stat. 1879; re-en. Sec. 248, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2771, C. Civ. Proc. 1895; re-en. Sec. 7628, Rev. C. 1907; re-en. Sec. 10282, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1613; re-en. Sec. 10282, R.C.M. 1935; R.C.M. 1947, 91-3402.

72-12-1002. En. Sec. 249, p. 305, L. 1877; re-en. Sec. 249, 2nd Div. Rev. Stat. 1879; re-en. Sec. 249, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2772, C. Civ. Proc. 1895; re-en. Sec. 7629, Rev. C. 1907; re-en. Sec. 10283, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1614; re-en. Sec. 10283, R.C.M. 1935; R.C.M. 1947, 91-3403.

72-12-1003. En. Sec. 250, p. 305, L. 1877; re-en. Sec. 250, 2nd Div. Rev. Stat. 1879; re-en. Sec. 250, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2773, C. Civ. Proc. 1895; re-en. Sec. 7630, Rev. C. 1907; re-en. Sec. 10284, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1615; re-en. Sec. 10284, R.C.M. 1935; R.C.M. 1947, 91-3404.

72-12-1004. En. Sec. 252, p. 305, L. 1877; re-en. Sec. 252, 2nd Div. Rev. Stat. 1879; re-en. Sec. 252, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2775, C. Civ. Proc. 1895; re-en. Sec. 7632, Rev. C. 1907; re-en. Sec. 10286, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1617; re-en. Sec. 10286, R.C.M. 1935; amd. Sec. 13, Ch. 365, L. 1974; R.C.M. 1947, 91-3406.

CHAPTER 13

PERSONS UNDER DISABILITY SUPPLEMENTARY PROVISIONS (Repealed. Sec. 134, Ch. 494, L. 1993)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-13-101. En. Sec. 403, p. 344, L. 1877; re-en. Sec. 403, 2nd Div. Rev. Stat. 1879; re-en. Sec. 403, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3054, C. Civ. Proc. 1895; re-en. Sec. 7811, Rev. C. 1907; re-en. Sec. 10459, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1804; re-en. Sec. 10459, R.C.M. 1935; R.C.M. 1947, 91-5206.

72-13-102. En. Sec. 404, p. 344, L. 1877; re-en. Sec. 404, 2nd Div. Rev. Stat. 1879; re-en. Sec. 404, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3055, C. Civ. Proc. 1895; re-en. Sec. 7812, Rev. C. 1907; re-en. Sec. 10460, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1805; re-en. Sec. 10460, R.C.M. 1935; R.C.M. 1947, 91-5207.

72-13-103. En. Sec. 405, p. 344, L. 1877; re-en. Sec. 405, 2nd Div. Rev. Stat. 1879; re-en. Sec. 405, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3056, C. Civ. Proc. 1895; re-en. Sec. 7813, Rev. C. 1907; re-en. Sec. 10461, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1806; re-en. Sec. 10461, R.C.M. 1935; R.C.M. 1947, 91-5208.

72-13-201. En. Sec. 406, p. 344, L. 1877; re-en. Sec. 406, 2nd Div. Rev. Stat. 1879; re-en. Sec. 406, 2nd Div. Comp. Stat. 1887; amd. Sec. 3057, C. Civ. Proc. 1895; re-en. Sec. 7814, Rev. C. 1907; re-en. Sec. 10462, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1807; re-en. Sec. 10462, R.C.M. 1935; R.C.M. 1947, 91-5209.

72-13-202. En. Sec. 374, p. 337, L. 1877; re-en. Sec. 374, 2nd Div. Rev. Stat. 1879; re-en. Sec. 374, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2987, C. Civ. Proc. 1895; re-en. Sec. 7776, Rev. C. 1907; re-en. Sec. 10424, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1775; re-en. Sec. 10424, R.C.M. 1935; R.C.M. 1947, 91-4908.

72-13-203. En. Sec. 425, p. 348, L. 1877; re-en. Sec. 425, 2nd Div. Rev. Stat. 1879; re-en. Sec. 425, 2nd Div. Comp. Stat. 1887; re-en. Sec. 346, Civ. C. 1895; re-en. Sec. 3789, Rev. C. 1907; re-en. Sec. 5884, R.C.M. 1921; Cal. Civ. C. Sec. 252; Field Civ. C. Sec. 133; re-en. Sec. 5884, R.C.M. 1935; R.C.M. 1947, 91-4521.

72-13-301. En. Sec. 417, p. 346, L. 1877; re-en. Sec. 417, 2nd Div. Rev. Stat. 1879; re-en. Sec. 417, 2nd Div. Comp. Stat. 1887; re-en. Sec. 338, Civ. C. 1895; re-en. Sec. 3781, Rev. C. 1907; re-en. Sec. 5876, R.C.M. 1921; Field Civ. C. Sec. 125; re-en. Sec. 5876, R.C.M. 1935; R.C.M. 1947, 91-4509.

CHAPTER 14

ESCHEATED ESTATES

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Part 4 — Fiduciary Deposit in Certain Cases Claims—Escheat

72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher.
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Part 1
General Provisions

72-14-101. Short title. Parts 1 through 3 of this chapter are to be known as the "Escheated Estates Act".

History: En. Sec. 1, Ch. 184, L. 1943; R.C.M. 1947, 91-501; amd. Sec. 16, Ch. 6, L. 1979; amd. Sec. 1, Ch. 628, L. 1979.

72-14-102. When title to escheated property vests in state. (1) Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, the title vests in the state of Montana immediately upon the death of the owner without an inquest or other similar proceeding and there is no presumption that the owner died leaving heirs or next of kin.

(2) This chapter does not apply to any rural electric or telephone cooperative organized under Title 35, chapter 18, if the board of trustees of the cooperative has acted to retain patronage refunds that are made by the cooperative to a member or former member and that remain unclaimed for 5 years.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 17, Ch. 6, L. 1979; amd. Sec. 2, Ch. 628, L. 1979; amd. Sec. 5, Ch. 263, L. 1993; amd. Sec. 31, Ch. 124, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 124 at end of (2) deleted "as provided in 70-9-203". Amendment effective July 1, 1997.

Cross-References

Escheat to state when no taker, 72-2-115.

72-14-103. Duty of attorney general — employment of special assistant. (1) The attorney general of the state of Montana shall be the legal adviser in connection with all escheated property matters, and it is the duty of the attorney general to institute investigations and conduct inquiries for the discovery of all real and personal property which may have escheated or should escheat to the state and for that purpose has the power to cite any and all persons before any of the district courts of this state to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property is discovered which should escheat to the state, the attorney general must institute suit in the district court of the county where said property shall be situated for the recovery and to escheat the same to the state and shall take all steps necessary to secure such escheat. The proceedings in all such actions shall be those provided for in parts 1 through 3 of this chapter.

(2) For this purpose the attorney general is authorized and empowered to employ a special assistant and incur necessary expenses subject to appropriation limitations.

History: Ap. p. Sec. 463, Pol. C. 1895; re-en. Sec. 200, Rev. C. 1907; re-en. Sec. 206, R.C.M. 1921; Cal. Pol. C. Sec. 474; re-en. Sec. 206, R.C.M. 1935; Sec. 82-409, R.C.M. 1947; Ap. p. Sec. 12, Ch. 184, L. 1943; amd. Sec. 1, Ch. 193, L. 1953; amd. Sec. 115, Ch. 147, L. 1963; amd. Sec. 1, Ch. 377, L. 1971; Sec. 91-512, R.C.M. 1947; R.C.M. 1947, 82-409, 91-512.

Part 2

Procedure for State Acquisition of Escheatable Property

Part Cross-References

Presentation of claims against county, 7-6-2421.

72-14-201. Discovery to determine existence of escheatable property. In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part).

72-14-202. Public administrator to deposit moneys with county treasurer — disbursement for administration — accounts. (1) It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending all moneys of the estate, and such moneys may be drawn upon the order of the public administrator, countersigned by a district judge, when required for the purposes of administration.

(2) It is the duty of the county treasurer to receive and safely keep all such moneys and pay them out upon the order of the public administrator, when countersigned by a district judge and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and for the safekeeping and payment of all such moneys, as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 3, Ch. 184, L. 1943; R.C.M. 1947, 91-503.

Cross-References

Public Administrator, 7-3-441.

Office of Public Administrator, 7-4-3004.

72-14-203. Investment of deposited moneys pending proceedings. The moneys thus deposited may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state, when such investment is for the best interests of the estate.

History: En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973; R.C.M. 1947, 91-504(part).

72-14-204. Order directing sale of property upon final settlement of estate. At the final settlement of an estate, if there are no heirs or other claimants, the district judge shall order the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer. The county treasurer shall keep an account of the money received from each estate and paid to the county treasurer and shall remit the money to the department of revenue with a statement of the estate to which the money belongs. The department shall immediately deliver the money to the state treasurer for deposit in the expendable trust fund.

History: En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973; R.C.M. 1947, 91-504(part); amd. Sec. 4, Ch. 5, L. 1995.

72-14-205. Unsold intangible personal property — how disposed of — auction sale. (1) If the intangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate, then the personal representative shall deliver all of the property to the department of revenue with a statement setting forth the name of the estate to which it belongs. The department shall, within 1 year of the receipt of the property, sell the property to the highest bidder at a public auction sale at the department's office in Helena, Montana.

(2) The department shall give notice of the sale by publication in a Helena newspaper once a week for 2 successive weeks. The last publication must be at least 20 days prior to the date of the sale. The notice must give the time and place of the sale and must contain a list and description of the stocks, bonds, securities, or other intangible personal property to be sold.

(3) All of the expenses of the sale must be deducted from the proceeds of the sale by the department, and the balance of the proceeds must be delivered by the department to the state treasurer for deposit in the expendable trust fund.

History: En. Sec. 5, Ch. 184, L. 1943; amd. Sec. 112, Ch. 147, L. 1963; amd. Sec. 3, Ch. 156, L. 1971; amd. Sec. 69, Ch. 391, L. 1973; R.C.M. 1947, 91-505; amd. Sec. 3, Ch. 628, L. 1979; amd. Sec. 5, Ch. 5, L. 1995.

72-14-206. Unsold real property — how disposed of — auction sale. (1) If the real property was not sold by the personal representative at the final settlement of the estate, then the personal representative shall make and execute to the state of Montana a deed and deliver the deed to the county clerk and recorder of the county in which the real property is situated. The county clerk and recorder shall file and record the deed without charge and shall mail the deed to the department of revenue. The department of revenue shall record the deed and deliver it to the board of land commissioners.

(2) Within 1 year after the receipt of the recorded deed, the board shall sell the property to the highest bidder at a public auction sale to be held at the courthouse in the county where the real property or any part of the property is situated.

(3) The board shall give notice of the sale by publication once a week for 2 weeks in a newspaper published in the county in which the real estate or any part of the real estate is situated. The last publication must be at least 20 days prior to the date of the sale. The notice must give the time and place of the sale and contain a description of the real property to be sold.

(4) All expenses of the sale must be deducted by the board from the proceeds of the sale, and the balance of the proceeds must be turned over to the state treasurer for deposit in the expendable trust fund. The board shall provide the department with a statement indicating the sale price, expenses, and net proceeds resulting from each sale.

History: En. Sec. 6, Ch. 184, L. 1943; amd. Sec. 113, Ch. 147, L. 1963; amd. Sec. 4, Ch. 156, L. 1971; amd. Sec. 70, Ch. 391, L. 1973; R.C.M. 1947, 91-506; amd. Sec. 4, Ch. 628, L. 1979; amd. Sec. 6, Ch. 5, L. 1995.

72-14-207. Unsold tangible personal property — how disposed of — auction sale. (1) If the tangible personal property in an escheated estate was not sold by the personal representative at the final settlement of the estate, the personal representative shall deliver the property to the county treasurer. The county treasurer shall, within 1 year of the receipt of the property, sell it to the highest bidder at a public auction sale at the county seat of the county of administration of the estate.

(2) The county treasurer shall give notice of the sale by publication once a week for 2 successive weeks in a newspaper published in the county of administration. The last publication must be at least 20 days prior to the date of the sale. The notice shall give the time and place of such sale and contain a description of the property to be sold.

(3) All expenses of the sale must be deducted from the proceeds of the sale by the county treasurer, and the balance of the proceeds must be delivered by the county treasurer to the department of revenue for deposit in the expendable trust fund.

History: En. Sec. 7, Ch. 184, L. 1943; amd. Sec. 114, Ch. 147, L. 1963; amd. Sec. 5, Ch. 156, L. 1971; amd. Sec. 71, Ch. 391, L. 1973; R.C.M. 1947, 91-507; amd. Sec. 5, Ch. 628, L. 1979; amd. Sec. 7, Ch. 5, L. 1995.

72-14-208. Sales by department of revenue and county treasurer — how conducted. All hereinbefore mentioned sales by the department of revenue or county treasurer must be for cash at public auction and shall be made to the highest bidder. However, the seller may reject all bids which are disproportionate to the value of the property being sold.

History: En. Sec. 8, Ch. 184, L. 1943; amd. Sec. 6, Ch. 156, L. 1971; amd. Sec. 72, Ch. 391, L. 1973; R.C.M. 1947, 91-508; amd. Sec. 6, Ch. 628, L. 1979.

72-14-209. Deposit of all sums escheated — expendable trust fund. All sums escheated under the provisions of parts 1 through 3 of this chapter must be delivered by the department of revenue to the state treasurer and deposited by the treasurer in the expendable trust fund.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 7, Ch. 628, L. 1979; amd. Sec. 8, Ch. 5, L. 1995.

72-14-210. Expendable trust fund money to be held in trust — deposit in public school nonexpendable trust fund. Money and property placed in the expendable trust fund must be held in trust for a period of 5 years prior to deposit in the public school nonexpendable trust fund by the state treasurer. The expendable trust is for the benefit of persons who claim property pursuant to part 3 of this chapter. A claim may be brought for an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the property to the possession of the state.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973; R.C.M. 1947, 91-502(part); amd. Sec. 8, Ch. 628, L. 1979; amd. Sec. 31, Ch. 281, L. 1983; amd. Sec. 9, Ch. 5, L. 1995.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Treasury fund structure, 17-2-102.

Part 3

Actions for Claim of Escheated Property

72-14-301. Filing of action — service — applicability of other procedural provisions. (1) Any persons claiming property in the hands of the state treasurer must bring an action in the district court of Lewis and Clark County, Montana, against the state treasurer.

(2) In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general, and one must be served upon the director of revenue.

(3) Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part).

72-14-302. Statute of limitations. Such action must be brought within 5 years from the date on which the money or property is received by the state treasurer, saving, however, to minors and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or 5 years after their respective disabilities cease.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part); amd. Sec. 9, Ch. 628, L. 1979; amd. Sec. 11, Ch. 2, L. 1983.

72-14-303. Inheritance tax — determination — objections. The inheritance tax on estates subject to parts 1 through 3 of this chapter is to be determined and objections filed in accordance with Title 72, chapter 16, part 4. The determination of the department of revenue shall fix the amount of inheritance tax, if any, which is due from a person claiming under this part to the state of Montana upon the money or property claimed, and none of the money or property shall be turned over to the claimant until such inheritance tax is paid. The department of revenue shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973; R.C.M. 1947, 91-509(part); amd. Sec. 10, Ch. 628, L. 1979.

Part 4

Fiduciary Deposit in Certain Cases Claims — Escheat

72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances — receipt as voucher. When property in the hands of a personal representative, trustee, or other fiduciary is assigned or distributed to any heir, legatee, devisee, creditor, beneficiary, or person interested in any estate or trust who has no agent in this state or who cannot be found or who refuses to accept the same or to give a proper voucher therefor or to a minor or incompetent person who has no legal guardian to receive the same or person authorized to receipt therefor and the same or any part thereof consists of money, the personal representative, trustee, or other fiduciary may deposit the money in a special fund in the name of the heir, legatee, devisee, creditor, beneficiary, or person interested with the county treasurer of the county in which the proceedings are pending or in which such property is located, who shall give a receipt for the same and be liable upon his official bond therefor; and said receipt shall be deemed and received by the court or judge thereof as a voucher in favor of the personal representative, trustee, or other fiduciary with the same force and effect as if executed by such heir, legatee, devisee, creditor, beneficiary, or person interested.

History: **En. Sec. 1, Ch. 128, L. 1947; R.C.M. 1947, 91-524; amd. Sec. 11, Ch. 628, L. 1979.**

72-14-402. Claim for money deposited in county treasury. When any person appears and claims the money paid into the county treasury, the district court of such county must inquire into such claim and, if satisfied of his right thereto, must make an order to that effect, and upon presentation of the order, the treasurer must draw his warrant on the special fund for the amount to which claimant is entitled.

History: **En. Sec. 2, Ch. 128, L. 1947; R.C.M. 1947, 91-525.**

72-14-403. Deposit of unclaimed property in state treasury — escheat. (1) All money or other property distributed in the administration of an estate of a decedent or as the subject of a trust and deposited before or after July 1, 1947, with the county treasurer to the credit of the distributee or beneficiary and any money remaining on deposit to the credit of an estate after final distribution must, within 1 year of receipt by the county treasurer, be delivered into the state treasury for deposit in the expendable trust fund by the county treasurer.

(2) If money or other property deposited in the state treasury is not claimed by the person or persons entitled to the property by bringing an action as provided in part 3 of this chapter, the money or property escheats to the state and must be placed in the public school nonexpendable trust fund.

History: **En. Sec. 3, Ch. 128, L. 1947; amd. Sec. 117, Ch. 147, L. 1963; R.C.M. 1947, 91-526; amd. Sec. 12, Ch. 628, L. 1979; amd. Sec. 32, Ch. 281, L. 1983; amd. Sec. 10, Ch. 5, L. 1995.**

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Treasury fund structure, 17-2-102.

CHAPTER 15

PUBLIC ADMINISTRATOR

Part 1 — Powers and Duties in Acquisition of Estates

72-15-101. Other provisions to supplement chapter.
72-15-102. When public administrator to take charge of estate.
72-15-103. Requirement to procure letters of administration — bond and oath.
72-15-104. Duty to commence actions for recovery of property.
72-15-105. Duty of persons in whose house stranger dies — notification to public administrator.
72-15-106. Civil officers to notify public administrator of property in danger of loss or waste.
72-15-107. Power to require persons controlling property to furnish statement describing property.
72-15-108. Refusal to furnish statement — misdemeanor.
72-15-109. Order to examine person in possession or charged with misappropriation of estate.
72-15-110. Refusal to be examined — civil contempt.

Part 2 — Powers and Duties in Administration

72-15-201. Duty to make out inventory, administer, and account.
72-15-202. Duty to deliver up estate when letters granted to another.
72-15-203. Power of court to order account and delivery of estate at any time.
72-15-204. Duty to keep register.
72-15-205. Deposit of moneys with county treasurer — withdrawals for administrative costs — investment.
72-15-206. Monthly settlement of accounts.
72-15-207. Annual account of condition of all estates.
72-15-208. Power of court to require additional report or bond.
72-15-209. Power of public administrator to administer oaths.
72-15-210. Fees — how paid.
72-15-211. Conflict of interest prohibited — affidavit.
72-15-212. Final settlement of estate — sale of property — escheat.
72-15-213. Wrongful failure of public administrator to deposit moneys — action on bond.

Part 3 — Compensation—Termination of Office

72-15-301. Compensation of public administrator.
72-15-302. Retiring public administrator may close pending estates.
72-15-303. Accounting and surrender of pending estates on retirement of public administrator.
72-15-304. Adjustment of compensation.

Chapter Cross-References

Public Administrator, 7-3-441.

Office of Public Administrator, 7-4-3004.

Part 1

Powers and Duties in Acquisition of Estates

72-15-101. Other provisions to supplement chapter. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties or for the administration of an estate in his hands, the provisions of this title must govern.

History: En. Sec. 350, p. 330, L. 1877; re-en. Sec. 350, 2nd Div. Rev. Stat. 1879; re-en. Sec. 350, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4528, Pol. C. 1895; re-en. Sec. 3091, Rev. C. 1907; re-en. Sec. 10008, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1743; re-en. Sec. 10008, R.C.M. 1935; R.C.M. 1947, 91-619; amd. Sec. 18, Ch. 6, L. 1979.

72-15-102. When public administrator to take charge of estate. (1) Every public administrator duly elected, commissioned, and qualified must take charge of estates of persons dying within his county as follows:

(a) of estates of decedents for which no administrators are appointed and which, in consequence thereof, are being wasted, uncared for, or lost;

(b) of estates of decedents who have no known heirs;

(c) of estates ordered into his hands by the court; and

(d) of estates upon which letters of administration have been issued to him by the court.

(2) However, it shall be unlawful for any public administrator of any county of the state of Montana to file any petition for the issuance to him as such public administrator of letters of administration of the estate of any decedent until at least 30 days have elapsed from the day of the death of any such decedent, unless it is affirmatively shown and made to appear in and by any such petition for letters of administration that there are no known heirs of such decedent or that all of the known heirs of such decedent reside outside of the state of Montana and that the estate of such decedent consists of property of such a nature that it will be lost, wasted, or depreciated in value unless cared for and administered upon at once.

History: **En. Sec. 333, p. 326, L. 1877; re-en. Sec. 333, 2nd Div. Rev. Stat. 1879; re-en. Sec. 333, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4510, Pol. C. 1895; re-en. Sec. 3073, Rev. C. 1907; re-en. Sec. 9990, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1726; re-en. Sec. 9990, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1941; R.C.M. 1947, 91-601.**

Cross-References

Power of court to require additional report or bond, 72-15-208.

72-15-103. Requirement to procure letters of administration — bond and oath. (1) Whenever a public administrator takes charge of an estate under order of the court, he must with all convenient dispatch procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons.

(2) His official bond and oath are in lieu of a personal representative's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court.

History: **En. Sec. 334, p. 326, L. 1877; re-en. Sec. 334, 2nd Div. Rev. Stat. 1879; re-en. Sec. 334, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4511, Pol. C. 1895; re-en. Sec. 3074, Rev. C. 1907; re-en. Sec. 9991, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1727; re-en. Sec. 9991, R.C.M. 1935; amd. Sec. 4, Ch. 263, L. 1975; R.C.M. 1947, 91-602.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-15-104. Duty to commence actions for recovery of property. The public administrator must institute all actions and prosecutions necessary to recover the property, debts, papers, or other estate of the decedent.

History: **En. Sec. 339, p. 327, L. 1877; re-en. Sec. 339, 2nd Div. Rev. Stat. 1879; re-en. Sec. 339, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4516, Pol. C. 1895; re-en. Sec. 3079, Rev. C. 1907; re-en. Sec. 9996, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1732; re-en. Sec. 9996, R.C.M. 1935; R.C.M. 1947, 91-607.**

72-15-105. Duty of persons in whose house stranger dies — notification to public administrator. Whenever a stranger or person without known heirs dies intestate in the house or premises of another, the possessor of such premises or anyone knowing the facts must give immediate notice thereof to the public administrator of the county; in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the public administrator or any person interested.

History: En. Sec. 335, p. 326, L. 1877; re-en. Sec. 335, 2nd Div. Rev. Stat. 1879; re-en. Sec. 335, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4512, Pol. C. 1895; re-en. Sec. 3075, Rev. C. 1907; re-en. Sec. 9992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1728; re-en. Sec. 9992, R.C.M. 1935; R.C.M. 1947, 91-603.

72-15-106. Civil officers to notify public administrator of property in danger of loss or waste. All civil officers must inform the public administrator of all property known to them belonging to a decedent which is liable to loss, injury, or waste and which, by reason thereof, ought to be in the possession of the public administrator.

History: En. Sec. 338, p. 327, L. 1877; re-en. Sec. 338, 2nd Div. Rev. Stat. 1879; re-en. Sec. 338, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4515, Pol. C. 1895; re-en. Sec. 3078, Rev. C. 1907; re-en. Sec. 9995, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1731; re-en. Sec. 9995, R.C.M. 1935; R.C.M. 1947, 91-606.

72-15-107. Power to require persons controlling property to furnish statement describing property. Whenever any person dies in any county of this state and no administrator has been appointed to take charge of his estate, the public administrator of such county, prior to the issuance of letters of administration to him, shall have authority to make a written demand upon any person, firm, bank, or corporation, which he believes holds or has in its possession or control any money, evidence of indebtedness, or other personal property or which owes to such deceased person any money, to furnish to him a written statement, under oath, showing the amount of money or the evidence of indebtedness or personal property of such deceased person held by it fully describing the same and the total sums of money, if any, due from it to such deceased person. Upon receipt of such written demand, the person, firm, bank, or corporation receiving the same shall immediately furnish, under oath, to such public administrator said statement.

History: En. Sec. 1, Ch. 134, L. 1909; re-en. Sec. 10010, R.C.M. 1921; re-en. Sec. 10010, R.C.M. 1935; R.C.M. 1947, 91-621.

72-15-108. Refusal to furnish statement — misdemeanor. Any person, firm, bank, or corporation or officer, agent, or employee thereof refusing upon demand to furnish the statement as required by 72-15-107 shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 134, L. 1909; re-en. Sec. 10011, R.C.M. 1921; re-en. Sec. 10011, R.C.M. 1935; R.C.M. 1947, 91-622.

Cross-References

Penalty when none specified, 46-18-212.

72-15-109. Order to examine person in possession or charged with misappropriation of estate. When the public administrator complains to the district court or a judge thereof, on oath, that any person has concealed, committed theft of, or disposed of or has in his possession any money, goods, property, or effects to the possession of which such administrator is entitled in his official capacity, the court or judge may cite such person to appear and may examine him on oath touching the matter of such complaint.

History: En. Sec. 340, p. 328, L. 1877; re-en. Sec. 340, 2nd Div. Rev. Stat. 1879; re-en. Sec. 340, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4517, Pol. C. 1895; re-en. Sec. 3080, Rev.

C. 1907; re-en. Sec. 9997, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1733; re-en. Sec. 9997, R.C.M. 1935; amd. Sec. 65, Ch. 359, L. 1977; R.C.M. 1947, 91-608.

72-15-110. Refusal to be examined — civil contempt. All such interrogatories and answers must be reduced to writing and signed by the party examined and filed in the court. If the person so cited refuses to appear and submit to such examination or to answer such interrogatories as may be put to him touching the matter of such complaint, the court or judge may commit him to the county jail, there to remain in close custody until he submits to the order of the court or judge.

History: En. Sec. 341, p. 328, L. 1877; re-en. Sec. 341, 2nd Div. Rev. Stat. 1879; re-en. Sec. 341, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4518, Pol. C. 1895; re-en. Sec. 3081, Rev. C. 1907; re-en. Sec. 9998, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1734; re-en. Sec. 9998, R.C.M. 1935; R.C.M. 1947, 91-609.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Part 2

Powers and Duties in Administration

72-15-201. Duty to make out inventory, administer, and account. The public administrator must make out and return an inventory of all estates taken into his possession and administer and account for the same according to the provisions of this chapter, subject to the control and directions of the court.

History: En. Sec. 336, p. 326, L. 1877; re-en. Sec. 336, 2nd Div. Rev. Stat. 1879; re-en. Sec. 336, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4513, Pol. C. 1895; re-en. Sec. 3076, Rev. C. 1907; re-en. Sec. 9993, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1729, re-en. Sec. 9993, R.C.M. 1935; R.C.M. 1947, 91-604.

72-15-202. Duty to deliver up estate when letters granted to another. If at any time letters testamentary or of administration are regularly granted to any other person on the estate of which the public administrator has charge, he must, under order of the court, account for, pay, and deliver to the executor or administrator thus appointed all the money, property, papers, and estate of every kind in his possession or under his control.

History: En. Sec. 337, p. 327, L. 1877; re-en. Sec. 337, 2nd Div. Rev. Stat. 1879; re-en. Sec. 337, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4514, Pol. C. 1895; re-en. Sec. 3077, Rev. C. 1907; re-en. Sec. 9994, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1730; re-en. Sec. 9994, R.C.M. 1935; R.C.M. 1947, 91-605.

72-15-203. Power of court to order account and delivery of estate at any time. The court or judge may, at any time, order the public administrator to account for and deliver all the money of an estate in his hands to the heirs or to the executors or administrators regularly appointed.

History: En. Sec. 342, p. 328, L. 1877; re-en. Sec. 342, 2nd Div. Rev. Stat. 1879; re-en. Sec. 342, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4519, Pol. C. 1895; re-en. Sec. 3082, Rev. C. 1907; re-en. Sec. 9999, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1735; re-en. Sec. 9999, R.C.M. 1935; R.C.M. 1947, 91-610.

72-15-204. Duty to keep register. It is the duty of the public administrator to keep a book to be labeled "Register of Public Administrator" in which he must enter:

(1) the name of every deceased person on whose estate he administers;
(2) the date of granting letters;

(3) money received;
(4) the property and its value;
(5) proceeds of all sales of property;
(6) the amount of his fees;
(7) the expenses of administration;
(8) the amount of the estate after all charges and expenses have been paid;
(9) the disposition of the property on distribution;
(10) the date of discharge of administrator; and
(11) such other matters as may be necessary to give a full and complete history of each estate administered by him.

History: **En. Sec. 4529, Pol. C. 1895; re-en. Sec. 3092, Rev. C. 1907; re-en. Sec. 10009, R.C.M. 1921; re-en. Sec. 10009, R.C.M. 1935; R.C.M. 1947, 91-620.**

Cross-References

Public records, Title 2, ch. 6.

72-15-205. Deposit of moneys with county treasurer — withdrawals for administrative costs — investment. (1) It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending all moneys of the estate, and such moneys may be drawn upon the order of the personal representative, countersigned by a district judge, when required for the purposes of administration.

(2) It is the duty of the county treasurer to receive and safely keep all such moneys and pay them out upon the order of the personal representative, when countersigned by a district judge and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and for the safekeeping and payment of all such moneys, as herein provided, the treasurer and his sureties are liable upon his official bond.

(3) The moneys thus deposited may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state when such investment is for the best interests of the estate.

History: **En. Sec. 344, p. 329, L. 1877; re-en. Sec. 344, 2nd Div. Rev. Stat. 1879; re-en. Sec. 344, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4521, Pol. C. 1895; re-en. Sec. 3084, Rev. C. 1907; re-en. Sec. 10001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1737; amd. Sec. 1, Ch. 119, L. 1929; amd. Sec. 1, Ch. 76, L. 1931; re-en. Sec. 10001, R.C.M. 1935; amd. Sec. 14, Ch. 365, L. 1974; R.C.M. 1947, 91-612(part).**

72-15-206. Monthly settlement of accounts. The public administrator is required to account and to settle and adjust his accounts, relating to the care and disbursement of money or property belonging to estates in his hands, with the clerk of the district court on the first Monday of each month, and he must pay to the county treasurer any money remaining in his hands of an estate unclaimed.

History: **En. Sec. 346, p. 329, L. 1877; re-en. Sec. 346, 2nd Div. Rev. Stat. 1879; re-en. Sec. 346, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4523, Pol. C. 1895; re-en. Sec. 3086, Rev. C. 1907; re-en. Sec. 10003, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1739; re-en. Sec. 10003, R.C.M. 1935; amd. Sec. 5, Ch. 263, L. 1975; R.C.M. 1947, 91-614.**

72-15-207. Annual account of condition of all estates. (1) The public administrator must once each year make to the district court or a judge thereof, under oath, a return of all estates of decedents which have come into his hands stating:

(a) the value of the same;

(b) the money which has come into his hands from each estate;
(c) what he has done with it;
(d) the amount of his fees and expenses incurred;
(e) the balance, if any, remaining in his hands.

(2) He must post a copy of the same in the office of the clerk of the district court of the county.

History: **En. Sec. 343, p. 329, L. 1877; re-en. Sec. 343, 2nd Div. Rev. Stat. 1879; re-en. Sec. 343, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4520, Pol. C. 1895; re-en. Sec. 3083, Rev. C. 1907; re-en. Sec. 10000, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1736; re-en. Sec. 10000, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1939; R.C.M. 1947, 91-611.**

72-15-208. Power of court to require additional report or bond. The court or judge may, at any time, require the public administrator to report the amount of moneys and property of any estate in his hands and may require him at any time to file additional bond or bonds.

History: **En. Sec. 4527, Pol. C. 1895; re-en. Sec. 3090, Rev. C. 1907; re-en. Sec. 10007, R.C.M. 1921; re-en. Sec. 10007, R.C.M. 1935; R.C.M. 1947, 91-618.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-15-209. Power of public administrator to administer oaths. Public administrators may administer oaths in regard to all matters touching the discharge of their duties or the administration of estates in their hands.

History: **En. Sec. 349, p. 330, L. 1877; re-en. Sec. 349, 2nd Div. Rev. Stat. 1879; re-en. Sec. 349, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4526, Pol. C. 1895; re-en. Sec. 3089, Rev. C. 1907; re-en. Sec. 10006, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1742; re-en. Sec. 10006, R.C.M. 1935; R.C.M. 1947, 91-617.**

Cross-References

Officers who may administer oaths, 1-6-101.

72-15-210. Fees — how paid. The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets thereof, as soon as the same come into his hands.

History: **En. Sec. 348, p. 330, L. 1877; re-en. Sec. 348, 2nd Div. Rev. Stat. 1879; re-en. Sec. 348, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4525, Pol. C. 1895; re-en. Sec. 3088, Rev. C. 1907; re-en. Sec. 10005, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1741; re-en. Sec. 10005, R.C.M. 1935; R.C.M. 1947, 91-616.**

Cross-References

Compensation of Public Administrator, 72-15-301.

72-15-211. Conflict of interest prohibited — affidavit. The public administrator must not be interested in the expenditures of any kind made on account of any estate he administers; nor must he be associated, in business or otherwise, with anyone who is so interested; and he must attach to his report and publication, made in accordance with 72-15-207, his affidavit to that effect.

History: **En. Sec. 345, p. 329, L. 1877; re-en. Sec. 345, 2nd Div. Rev. Stat. 1879; re-en. Sec. 345, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4522, Pol. C. 1895; re-en. Sec. 3085, Rev. C. 1907; re-en. Sec. 10002, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1738; re-en. Sec. 10002, R.C.M. 1935; R.C.M. 1947, 91-613.**

72-15-212. Final settlement of estate — sale of property — escheat. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall credit the same and all other moneys belonging to said estate to the escheated estates fund, and the county treasurer shall forthwith remit all of said money to the department of revenue with a statement as to the estates to which the money belongs, which remittance shall be treated as provided in chapter 14, as amended.

History: En. Sec. 344, p. 329, L. 1877; re-en. Sec. 344, 2nd Div. Rev. Stat. 1879; re-en. Sec. 344, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4521, Pol. C. 1895; re-en. Sec. 3084, Rev. C. 1907; re-en. Sec. 10001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1737; amd. Sec. 1, Ch. 119, L. 1929; amd. Sec. 1, Ch. 76, L. 1931; re-en. Sec. 10001, R.C.M. 1935; amd. Sec. 14, Ch. 365, L. 1974; R.C.M. 1947, 91-612(part).

72-15-213. Wrongful failure of public administrator to deposit moneys — action on bond. When it appears from the returns made in pursuance of the foregoing sections that any money remains in the hands of the public administrator after final settlement of the estate unclaimed which should be paid over to the county treasurer, the court or judge must order the same paid over to the county treasurer; and on failure of the public administrator to comply with the order within 10 days after the same is made, the county attorney must immediately institute the requisite proceedings against the public administrator for a judgment against him and the sureties on his official bond, in the amount of the money so withheld and costs.

History: En. Sec. 347, p. 330, L. 1877; re-en. Sec. 347, 2nd Div. Rev. Stat. 1879; re-en. Sec. 347, 2nd Div. Comp. Stat. 1887; re-en. Sec. 4524, Pol. C. 1895; re-en. Sec. 3087, Rev. C. 1907; re-en. Sec. 10004, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1740; re-en. Sec. 10004, R.C.M. 1935; R.C.M. 1947, 91-615.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Part 3

Compensation — Termination of Office

72-15-301. Compensation of public administrator. (1) The public administrator shall receive and collect for his own use as full compensation for his services under this chapter, including attorney's fees, the amounts provided for in 72-3-631 and 72-3-633.

(2) When the public administrator is appointed conservator of the estate of a protected person pursuant to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to the protected person or from his estate to be paid to the public administrator as full compensation for his services, excluding court costs and attorney's fees. The total sum deducted as compensation for the public administrator may not exceed 2 1/2% of the annual periodic payments or $100, whichever is less.

History: Ap. p. Sec. 8, Ch. 134, L. 1909; re-en. Sec. 10017, R.C.M. 1921; re-en. Sec. 10017, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1969; amd. Sec. 6, Ch. 263, L. 1975; Sec. 91-628, R.C.M. 1947; Ap. p. Sec. 4641, Pol. C. 1895; re-en. Sec. 3174, Rev. C. 1907; re-en. Sec. 4923, R.C.M. 1921; re-en. Sec. 4923, R.C.M. 1935; amd. Sec. 2, Ch. 263, L. 1975; Sec. 25-237, R.C.M. 1947; R.C.M. 1947, 25-237, 91-628; amd. Sec. 2, Ch. 424, L. 1979; amd. Sec. 6, Ch. 362, L. 1985.

72-15-302. Retiring public administrator may close pending estates. The public administrator, upon the expiration or termination of his term of office, may continue to administer estates not closed by filing and presenting to the court a full and complete account pertaining to each estate not closed and securing an order of court granting him letters of administration and qualifying himself as a personal representative.

History: **En. Sec. 1, Ch. 4, L. 1941; amd. Sec. 7, Ch. 263, L. 1975; R.C.M. 1947, 91-629.**

72-15-303. Accounting and surrender of pending estates on retirement of public administrator. Should said public administrator, upon the expiration or termination of his office and within 60 days thereafter, fail to qualify as general administrator of estates not yet closed, he shall, upon demand of his successor to such office or voluntarily if he desires to be relieved from further performance of the trust, surrender to said successor all estates not closed and property belonging to such estates, having first filed and presented to the court for approval a full and complete account pertaining to such estate not closed.

History: **En. Sec. 2, Ch. 4, L. 1941; R.C.M. 1947, 91-630.**

72-15-304. Adjustment of compensation. The court shall determine and allow such predecessor in office for his services rendered in connection with estates not closed a compensation based upon the commission prescribed and allowed by law in proportion to the services necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor shall thereupon be allowed and paid the balance of such commission allowed.

History: **En. Sec. 3, Ch. 4, L. 1941; amd. Sec. 8, Ch. 263, L. 1975; R.C.M. 1947, 91-631.**

CHAPTER 16

INHERITANCE AND ESTATE TAXES

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Chapter Cross-References

Disposition of inheritance and estate taxes, 15-1-501.

Part 1
General Provisions

72-16-101. Definitions. In parts 1 through 8, the following definitions apply:

(1) "County treasurer", "public administrator", and "county attorney" mean the treasurer, public administrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

(2) "Decedent" includes the testator, intestate, grantor, bargainor, vendor, or donor.

(3) "Estate" and "property" mean the real and personal property or interest in the property passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees and not the property or interest in the property of the decedent, grantor, donor, or vendor and include all personal property within or outside of the state.

(4) "Intangible" or "intangible property", when used without other qualifications, includes but is not limited to all money, stocks, bonds, notes, securities, leaseholds, contracts, and credits of all kinds, secured or unsecured.

(5) "Joint" and "jointly" refer to ownership of property by two or more persons having as one of the incidents of the ownership the right of survivorship in the surviving owner or owners upon the death of one of the owners. This definition does not affect the concept of property owned as tenants in common, and this type of ownership continues to be recognized when applicable.

(6) "Transfer" includes the passing of property or any interest in the property, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner prescribed in parts 1 through 8 to each individual or corporation.

History: En. Sec. 22, Ch. 65, L. 1923; re-en. Sec. 10400.43, R.C.M. 1935; amd. Sec. 7, Ch. 490, L. 1977; R.C.M. 1947, 91-4453; amd. Sec. 2, Ch. 288, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 288 in definition of intangible, after "securities", inserted "leaseholds, contracts"; and made minor changes in style. Amendment effective April 18, 1997.

Effective Date — Retroactive Applicability: Section 6, Ch. 288, L. 1997, provided: "[This act] [72-16-101, 72-16-323, 72-16-453, and 72-16-455] is effective on passage and approval [approved April 18, 1997] and applies retroactively, within the meaning of 1-2-109, to estates of persons who die after December 31, 1996."

72-16-102. Jurisdiction. (1) The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws or to appoint a trustee of such estate or any part thereof or to give ancillary letters thereon shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction.

(2) If two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other district court.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1951; amd. Sec. 81, Ch. 391, L. 1973; amd. Sec. 6, Ch. 365, L. 1974; R.C.M. 1947, 91-4423.

Cross-References

District Court — original jurisdiction, 3-5-302.

Part 2

Powers and Duties of State Officers and Agencies

72-16-201. Powers of department generally — duty to supervise administration of tax laws — reports. (1) The department of revenue in the conduct of inheritance tax affairs has the same powers for gathering information and making investigations as is conferred by law on the department in the performance of its other duties.

(2) The department shall supervise the administration of the inheritance tax laws and investigate such particular estates to which the inheritance tax laws apply throughout the various counties of the state and cause to be made and filed in its office reports of such investigations, together with specific information and facts as to particular estates, that may seem to require special consideration and attention by the department of justice; but no information so acquired may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Secs. 10400.34, 10400.35, R.C.M. 1935; amd. Secs. 95, 96, Ch. 391, L. 1973; R.C.M. 1947, 91-4444, 91-4445(part); amd. Sec. 19, Ch. 6, L. 1979.

Cross-References

Tax administration — Department of Revenue, Title 15, ch. 1, part 2.

Tax administration — investigation and hearings, Title 15, ch. 1, part 3.

72-16-202. Repealed. Sec. 2, Ch. 61, L. 1997.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.35, R.C.M. 1935; amd. Sec. 96, Ch. 391, L. 1973; R.C.M. 1947, 91-4445(part); amd. Sec. 46, Ch. 112, L. 1991; amd. Sec. 40, Ch. 349, L. 1993.

72-16-203. Employment of assistants by department. The department of revenue may employ such other persons as experts and assistants as may be necessary to perform the duties that may be required of the department and fix their compensation.

History: En. Sec. 24, Ch. 65, L. 1923; re-en. Sec. 10400.45, R.C.M. 1935; amd. Sec. 103, Ch. 391, L. 1973; R.C.M. 1947, 91-4454.

72-16-204. Subpoena and discovery powers — contempt. (1) Oaths to witnesses in any matter under the investigation or consideration of the department of revenue may be administered by the director of revenue or his appointed agents.

(2) In case any witness shall fail to obey any summons to appear before the department or shall refuse to testify or answer any material questions or to produce records, books, papers, or documents, when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the department or to punish witnesses for any such neglect or refusal.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

Cross-References

Power to punish for contempt, 3-1-403.

General provisions governing discovery, Rule 26, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas and witnesses, Title 26, ch. 2.

72-16-205. Compensation of witnesses and officers serving subpoenas. In the discretion of the department of revenue, officers who serve summons or subpoenas and witnesses attending shall receive like compensation as officers and witnesses in the district court.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

72-16-206. Perjury. Any person who shall testify falsely in any material manner under the consideration of the department of revenue shall be guilty of and punished for perjury.

History: En. Sec. 25, Ch. 65, L. 1923; re-en. Sec. 10400.46, R.C.M. 1935; amd. Sec. 104, Ch. 391, L. 1973; R.C.M. 1947, 91-4455(part).

Cross-References

Perjury, 45-7-201.

72-16-207. Forms and blanks — department to furnish. The department of revenue shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings, and such blanks shall be printed at the expense of the state and furnished to each district court or the clerk thereof upon the request of the judge or clerk thereof.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.38, R.C.M. 1935; amd. Sec. 99, Ch. 391, L. 1973; amd. Sec. 10, Ch. 365, L. 1974; R.C.M. 1947, 91-4448.

72-16-208. Powers and duties of department as to nonresident estates. The department of revenue shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the department of justice and to the proper district court for appropriate legal action; but no information so acquired may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate.

History: **En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.36, R.C.M. 1935; amd. Sec. 97, Ch. 391, L. 1973; R.C.M. 1947, 91-4446; amd. Sec. 20, Ch. 6, L. 1979.**

72-16-209. Power of composition and compromise in certain cases. (1) The department of revenue is authorized to enter into an agreement with the executor, administrator, or trustee of any estate in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interests of the legatees or devisees are not ascertainable under the provisions of parts 1 through 8 or whenever a tax is claimed on account of the transfer of any property of a nonresident decedent and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition. However, no such composition shall be conclusive in favor of such executors, administrators, or trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment or fixed, absolute, or indefeasible rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian.

(2) Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy shall be filed in the office of the clerk of the district court of the county in which the tax was paid; one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto, and one copy to be retained by the department of revenue.

(3) In every estate in which the amount of inheritance tax collectible shall exceed or probably exceed the sum of $1,000, there shall be no compounding, composition, or settlement of the taxes under the authority conferred by this section or otherwise, until the department of revenue shall have investigated such estate and made a report thereon or until the department consents to such compounding, compromise, or settlement.

History: **(1), (2)En. Sec. 20, Ch. 65, L. 1923; re-en. Sec. 10400.41, R.C.M. 1935; amd. Sec. 102, Ch. 391, L. 1973; Sec. 91-4451, R.C.M. 1947; (3)En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.37, R.C.M. 1935; amd. Sec. 98, Ch. 391, L. 1973; Sec. 91-4447, R.C.M. 1947; R.C.M. 1947, 91-4447(part), 91-4451.**

Cross-References

Uniform tax review procedure — notice — appeal, 15-1-211.

72-16-210. Duty of justice department. The department of justice shall carry out and enforce the recommendations and directions of the department of revenue in all matters pertaining to the conduct of inheritance tax affairs.

History: **En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.37, R.C.M. 1935; amd. Sec. 98, Ch. 391, L. 1973; R.C.M. 1947, 91-4447(part); amd. Sec. 21, Ch. 6, L. 1979.**

72-16-211. Public administrator — duty to investigate concerning tax — compensation generally. (1) It shall be the duty of the public administrator, under the general supervision of the department of revenue and with the assistance of the county attorney, when required by the department or district judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the district court in such estates as the court may in its discretion deem necessary.

(2) For such services the public administrator shall be entitled to 5% of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the district judge, provided that the minimum fee for each such estate shall not be less than $5 and that it shall not exceed $25; but in cases of unusual difficulty in estates of resident decedents where the tax exceeds $500, the district judge may allow the public administrator such additional compensation as he may deem just and reasonable.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.43, R.C.M. 1935; amd. Sec. 94, Ch. 391, L. 1973; R.C.M. 1947, 91-4443.

72-16-212. Power of public administrator or other to seek administration when no application made. When no application for administration of the estate of any deceased person is made within 6 months after the demise of such person and such estate appears to come under the provisions of the inheritance tax laws or when administration has been completed without determining the tax, the public administrator of the proper county or any person interested in such estate may make application for such special or general administration as may be necessary for the purpose of the adjustment and payment of such tax, if any, or if no tax is due, for an order determining that fact.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.31, R.C.M. 1935; R.C.M. 1947, 91-4441(part).

72-16-213. Public administrator — duty as to transfer made in contemplation of death without payment of tax. Where it appears that the estate of a deceased person subject to the inheritance tax laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment is made within 6 months after the demise of such grantor, the public administrator of the proper county shall notify the department of revenue and on its order make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.32, R.C.M. 1935; amd. Sec. 93, Ch. 391, L. 1973; R.C.M. 1947, 91-4442.

Cross-References

Gifts in view of death, Title 70, ch. 3, part 2.

72-16-214. Public administrator — compensation under special provisions. In cases arising under 72-16-212 and 72-16-213, the public administrator, if appointed such special administrator, shall be entitled in the discretion of the court to the fees allowed by law to administrators or to other reasonable compensation, unless it be found that no tax is due.

History: En. Sec. 17, Ch. 65, L. 1923; re-en. Sec. 10400.31, R.C.M. 1935; R.C.M. 1947, 91-4441(part).

72-16-215. County treasurer — monthly report — payment of collections to state treasurer — interest on unpaid amounts. Between the 1st and 20th days of each month, each county treasurer shall make a report under oath to the department of revenue listing all payments received by him under the inheritance tax laws during the preceding month and stating for what estate, by whom, and when paid. The form of such report shall be prescribed by the department. He shall at the same time pay the state treasurer all the payments received by him under the inheritance tax laws and not previously paid to the state treasurer, and for all such payments collected by him and not paid to the state treasurer within 5 days from the time herein required, he shall pay interest at the rate of 10% per annum.

History: En. Sec. 19, Ch. 65, L. 1923; amd. Sec. 7, Ch. 150, L. 1925; re-en. Sec. 10400.40, R.C.M. 1935; amd. Sec. 2, Ch. 36, L. 1971; amd. Sec. 101, Ch. 391, L. 1973; R.C.M. 1947, 91-4450; amd. Sec. 3, Ch. 361, L. 1987.

Cross-References

Settlement of County Treasurer with State Treasurer, 15-1-504.

72-16-216. Clerk of court — duty to furnish copies of filed documents. It shall be the duty of the clerk of the district court to furnish to the department of revenue copies of such documents filed in connection with probate matters as the department may require.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; re-en. Sec. 10400.39, R.C.M. 1935; amd. Sec. 100, Ch. 391, L. 1973; R.C.M. 1947, 91-4449.

72-16-217. List of deaths to be made by department of public health and human services — copy to county clerk. The department of public health and human services shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of the death, reported to it during the period and shall send a copy of the list of deaths to the county clerk of each county in the state.

History: En. Sec. 2, Ch. 186, L. 1935; re-en. Sec. 10400.50, R.C.M. 1935; R.C.M. 1947, 91-4458; amd. Sec. 175, Ch. 418, L. 1995; amd. Sec. 521, Ch. 546, L. 1995.

Cross-References

Vital statistics — death, Title 50, ch. 15, part 4.

72-16-218. County clerk to check records against list — report to department. (1) The county clerk, upon the receipt of the list of deaths provided for in 72-16-217, shall immediately check the records of his county to determine whether any of the deceased persons whose names appear upon such list may have made any transfer of property or of property rights within such county during the 3 years preceding the death of such person or whether such deceased person may have been possessed of any property in such county at the time of his death.

(2) If he shall find that any such deceased person may have made any such transfers of property or of property rights or have died possessed of such, he shall immediately transmit such information to the department of revenue.

History: En. Sec. 3, Ch. 186, L. 1935; re-en. Sec. 10400.51, R.C.M. 1935; amd. Sec. 105, Ch. 391, L. 1973; R.C.M. 1947, 91-4459.

Part 3

Application and Imposition of Tax — Exemptions and Rates — Property Valuation

72-16-301. Taxable transfers generally — contemplation of death. (1) Except as provided in this section, a tax is imposed upon any transfer of property, real, personal, or mixed, or any interest in the property or income from the property in trust or otherwise to any person, association, or corporation in the following cases:

(a) when the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state;

(b) when a transfer is by will or intestate law of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of death; or

(c) when the transfer is of property made by a resident or by a nonresident when the nonresident's property is within the state or within its jurisdiction by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or enjoyment at or after death.

(2) A transfer made before the 3-year period ending on the date of the decedent's death is not considered to have been made in contemplation of death.

(3) Each transfer during the 3-year period ending on the date of the decedent's death must be considered to have been made in contemplation of death, except:

(a) a transfer shown to be a bona fide sale for an adequate and full consideration in money or money's worth may not be considered to be a gift made in contemplation of death;

(b) a transfer to the extent that the transfer was excluded from the definition of taxable gifts by reason of section 2503(b) of the Internal Revenue Code may not be considered to be a gift made in contemplation of death.

(4) Subsection (3)(b) does not apply to any transfer with respect to a life insurance policy.

History: Ap. p. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; Sec. 91-4401, R.C.M. 1947; (3)En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 269, L. 1955; Sec. 91-4402, R.C.M. 1947; R.C.M. 1947, 91-4401(part), 91-4402; amd. Sec. 25, Ch. 582, L. 1989; amd. Sec. 32, Ch. 592, L. 1995.

Cross-References

Disposition of inheritance and estate taxes, 15-1-501.

Gifts in view of death, Title 70, ch. 3, part 2.

72-16-302. Transfer under power of appointment. (1) To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment, such property shall be considered to have been transferred in a transfer taxable under the provisions of parts 1 through 8, whether or not the decedent exercised the power of appointment.

(2) The term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent may not be considered a general power of appointment.

History: **En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4404; amd. Sec. 26, Ch. 582, L. 1989.**

72-16-303. Joint estates — transfer by right of survivorship taxable. (1) Whenever any property is held by two or more persons in joint tenancy with right of survivorship, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer.

(2) The tax is on the full value of the property held as joint tenants with right of survivorship, except a part of the property as may be shown to have originally belonged to the survivor or survivors and never to have been received or acquired by the latter from the decedent for less than adequate and full consideration in money or money's worth. When the property or any part of the property, or part of the consideration with which the property was acquired, is shown to have been at any time acquired by the other person from the decedent for less than an adequate and full consideration in money or money's worth, only the part of the value of the property as is proportionate to the consideration furnished by the other person may be excepted. When any property has been acquired by gift, bequest, devise, or inheritance as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, the tax is on the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

History: **En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1951; amd. Sec. 1, Ch. 490, L. 1977; R.C.M. 1947, 91-4405; amd. Sec. 1, Ch. 636, L. 1979; amd. Sec. 27, Ch. 582, L. 1989.**

Cross-References

Joint interest defined, 70-1-307.

72-16-304. Insurance proceeds part of estate — exemption. All insurance payable upon the death of any person over and above $250,000 is considered a part of the property and estate passing to the person or persons entitled to receive it and, if payable to more than one person, the $250,000 exemption must be prorated between those persons in proportion to the amount of insurance payable to each.

History: **En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4406; amd. Sec. 1, Ch. 253, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 253 in two places increased from $50,000 to $250,000 the amount of life insurance that is not considered part of an estate; and made minor changes in style. Amendment effective April 14, 1997.

Effective Date — Retroactive Applicability: Section 2, Ch. 253, L. 1997, provided: "[This act] is effective on passage and approval [approved April 14, 1997] and applies retroactively, within the meaning of 1-2-109, to the estates of persons dying after December 31, 1996."

Cross-References

Life insurance, Title 33, ch. 20.

Life insurance — retirement plan — account with POD designation — transfer-on-death registration — deceased beneficiary, 72-2-716.

72-16-305. Bequests to executors or trustees — when taxable. If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by parts 1 through 8.

History: En. Sec. 10, Ch. 65, L. 1923; re-en. Sec. 10400.10, R.C.M. 1935; R.C.M. 1947, 91-4420.

72-16-306. Recording date prima facie date of transfer — transfers recorded after death. Recorded papers evidencing a transfer of property, real, personal, or mixed, or of any interest therein coming within the provisions of parts 1 through 8 are prima facie proof, for the purposes of parts 1 through 8, that it was made as of the date upon which such papers were recorded. Any such transfer, if recorded after the death of the person or persons making such transfer, whatever the form of such transfer, is considered, for the purposes of taxation under the provisions of parts 1 through 8, to have been made by will.

History: En. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4408; amd. Sec. 22, Ch. 6, L. 1979.

72-16-307. Tax — when imposed. The tax referred to in 72-16-301 shall be imposed when any person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after March 5, 1923.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; R.C.M. 1947, 91-4403(part).

72-16-308. Tax to be on clear market value — deductions allowed in determining value — valuation of certain farm and business property. (1) The tax imposed must be upon the clear market value of the property passing by transfer to each person, institution, association, corporation, or body politic at the rates prescribed in this section and only upon the excess of the exemption granted to the person, institution, association, corporation, or body politic.

(2) In determining the clear market value of the property passing by the transfer, the following deductions and no other are allowed:

(a) debts of the decedent owing at the date of death, provided that any debt secured by decedent's joint interest in property and for which the decedent was jointly and severally liable is deductible only to the extent of one-half or other proper fraction representing decedent's share of the property;

(b) expenses of funeral and last illness;

(c) all Montana state, county, municipal, and federal taxes, including all penalties and interest, owing by decedent at the date of death;

(d) the ordinary expenses of administration, including:

(i) the commissions and fees of executors and administrators and their attorneys actually allowed and paid;

(ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax;

(e) federal estate taxes due or paid; and

(f) the annual gift exclusion provided in section 2503(b) of the Internal Revenue Code.

(3) In determining clear market value, the valuation of certain farm and other real property may be made under 72-16-331 through 72-16-342.

History: En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1957; amd. Sec. 1, Ch. 232, L. 1959; R.C.M. 1947, 91-4407; amd. Sec. 1, Ch. 573, L. 1979; amd. Sec. 43, Ch. 705, L. 1979; amd. Sec. 33, Ch. 592, L. 1995.

72-16-309 and 72-16-310 reserved.

72-16-311. Exemption — how taken. The exemption allowed to each person, institution, association, corporation, or body politic shall be taken as provided in 72-16-321.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(1).

72-16-312. Exemption — transfers for charitable or public purposes. (1) The following transfers are totally exempt:

(a) all property transferred to the state or any of its institutions or to local governments within the state for strictly local government or other public purposes;

(b) all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, if any of the following conditions is present:

(i) the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(ii) the property transferred is limited for use within this state;

(iii) the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country and at the date of the decedent's death any one of the following conditions existed:

(A) the other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(B) the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(C) the society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are without discrimination gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) The tax imposed by 72-16-301 does not apply to transfers to corporations of this state organized under its laws or voluntary associations organized solely for religious, charitable, or educational purposes, which use the property so transferred exclusively for the purposes of their organization within the state.

History: (1)En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; Sec. 91-4414, R.C.M. 1947; (2)En. Sec. 1, Ch. 65, L. 1923; amd. Sec. 1, Ch. 150, L. 1925; amd. Sec. 1, Ch. 105, L. 1927; amd. Sec. 1, Ch. 186, L. 1935; re-en. Sec. 10400.1, R.C.M. 1935; Sec. 91-4401, R.C.M. 1947; R.C.M. 1947, 91-4401(part), 91-4414(2); amd. Sec. 23, Ch. 6, L. 1979.

72-16-313. *(Temporary)* **Exemptions of spouse and other relatives.** (1) The clear value of all property distributed or passing to a decedent's surviving spouse is exempt.

(2) The clear value of all property distributed or passing to the following is exempt:

(a) any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 1.

(b) any stepchild, as defined in 72-2-613, of the decedent.

(3) The following amounts are exempt:

(a) property of the clear value of $7,000 transferred to each of the persons who have attained majority described in 72-16-321(1); and

(b) property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2). *(Terminates July 1, 1999—sec. 3, Ch. 464, L. 1997.)*

72-16-313. *(Effective July 1, 1999)* **Exemptions of spouse and other relatives.** (1) The clear value of all property distributed or passing to a decedent's surviving spouse is exempt.

(2) The clear value of all property distributed or passing to the following is exempt:

(a) any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 1.

(b) any stepchild, as defined in 72-2-613, of the decedent, provided the relationship began on or before the stepchild's 18th birthday.

(3) The following amounts are exempt:

(a) property of the clear value of $7,000 transferred to each of the persons who have attained majority described in 72-16-321(1); and

(b) property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2).

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(3), (4), (6); amd. Sec. 1, Ch. 696, L. 1979; amd. Sec. 1, Ch. 202, L. 1981; amd. Sec. 1, Ch. 223, L. 1991; amd. Sec. 81, Ch. 494, L. 1993; amd. Sec. 1, Ch. 464, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 464 at end of (2)(b) deleted "provided the relationship began on or before the stepchild's 18th birthday". Amendment effective April 30, 1997, and terminates July 1, 1999.

Retroactive Applicability: Section 2, Ch. 464, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the estates of decedents occurring on or after January 1, 1995."

Termination — Applicability: Section 3, Ch. 464, L. 1997, provided: "(1) [Section 1] [72-16-313] terminates July 1, 1999.

(2) Notwithstanding the provisions of subsection (1), [section 1] applies to all inheritance taxes arising from deaths occurring between January 1, 1995, and July 1, 1999."

72-16-314. Probate code allowances and exemptions not in addition to tax exemptions. The allowances and exempt property provided for in 72-2-412 through 72-2-414 are to be included in computing the exemptions from inheritance tax provided for in 72-16-313 and are not in addition to such inheritance tax exemptions.

History: En. 91A-2-405 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-405.

72-16-315. Discretionary waiver of inheritance tax of surviving spouse. Notwithstanding any provision of law or statute in conflict herewith, the department of revenue, in its discretion, is authorized to issue a waiver of inheritance tax in the event of the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse, if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouse.

History: En. Sec. 1, Ch. 147, L. 1969; amd. Sec. 76, Ch. 391, L. 1973; R.C.M. 1947, 91-4414.1.

72-16-316. Exemption of tangible personal property subject to tax in state of location — reciprocity. No tax may be imposed upon any tangible personal property of a resident decedent when such property is located without this state and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and the tax has actually been paid, secured, or guaranteed; provided such property is not without this state temporarily or for the sole purpose of deposit or safekeeping and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(7).

72-16-317. Credit allowance on inheritance taxes paid to other states. The tax imposed by this part and part 9 shall, as to a resident of the state of Montana who died domiciled in Montana, be credited with the amount of any valid inheritance, estate, legacy, or succession taxes actually paid to any state or territory of the United States (other than the state of Montana) or to the District of Columbia. However, the amount to be so credited shall in no event exceed that amount which the resident decedent was taxed on that property in Montana.

History: En. Sec. 1, Ch. 236, L. 1943; R.C.M. 1947, 91-4412.

72-16-318. Child's credit for tax paid by decedent's spouse. Any child of a decedent is entitled to credit for so much of the tax paid by the decedent's spouse as applied to any property which is thereafter transferred by or from such spouse to the child, provided the spouse does not survive the decedent to exceed 10 years.

History: En. Sec. 4, Ch. 65, L. 1923; re-en. Sec. 10400.4, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973; amd. Sec. 1, Ch. 195, L. 1974; amd. Sec. 11, Ch. 263, L. 1975; amd. Sec. 4, Ch. 490, L. 1977; R.C.M. 1947, 91-4414(5).

72-16-319. Exemption — transfer of the estate of member of armed forces dying from combat wounds. (1) The taxes imposed in 72-16-301 and 72-16-904 do not apply to the transfer of property owned by a resident of the United States dying while in active service as a member of the armed services of the United States, if such decedent:

(a) was killed in action while serving in a combat zone, as determined under section 112(c) of the Internal Revenue Code of 1954, as amended; or

(b) died as a result of wounds, disease, or injury suffered while serving in a combat zone and while in the line of duty, by reason of a hazard to which he was subjected as an incident of such service.

(2) The transfer of property from such a decedent to any person, association, or corporation is exempt from inheritance and estate taxes imposed in this chapter.

History: En. Sec. 1, Ch. 673, L. 1979.

Cross-References

Servicemen, servicewomen, and veterans, Art. II, sec. 35, Mont. Const.

72-16-320 reserved.

72-16-321. Primary rates — amount remaining after exemptions not in excess of twenty-five thousand dollars. The exemptions allowed by 72-16-311 through 72-16-316 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value of the remaining amount of the total value of property or beneficial interests at the following rates:

(1) at the rate of 2% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the lineal ancestor of the decedent;

(2) at the rate of 4% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

(a) the brother or sister or a descendant of a brother or sister of the decedent;

(b) a wife of a son or the husband of a daughter of the decedent;

(3) at the rate of 6% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the uncle, aunt, or first cousin of the decedent;

(4) at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated;

(b) a stranger in blood to the decedent; or

(c) a body politic or corporate.

History: En. Sec. 2, Ch. 65, L. 1923; amd. Sec. 1, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.2, R.C.M. 1935; amd. Sec. 2, Ch. 490, L. 1977; R.C.M. 1947, 91-4409; amd. Sec. 2, Ch. 696, L. 1979; amd. Sec. 2, Ch. 202, L. 1981.

72-16-322. Other rates — amount remaining after exemptions in excess of twenty-five thousand dollars. The rates in 72-16-321 are for convenience termed the primary rates. When the amount of the clear value of the remaining amount of the property or interests exceeds $25,000, the rate of tax upon such excess shall be as follows:

(1) upon all in excess of $25,000 and up to $50,000, two times the primary rate;

(2) upon all in excess of $50,000 and up to $100,000, three times the primary rate;

(3) upon all in excess of $100,000, four times the primary rate.

History: En. Sec. 3, Ch. 65, L. 1923; amd. Sec. 1, Ch. 141, L. 1927; amd. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3, R.C.M. 1935; amd. Sec. 3, Ch. 490, L. 1977; R.C.M. 1947, 91-4410.

72-16-323. Exemption for closely held business property. (1) The value of any interest in a closely held business represented by real property and tangible personal property and all real property and tangible personal property of a closely held business, as defined in 72-16-453, that is transferred to the lineal descendants of the decedent's grandparents is exempt from the tax imposed under parts 1 through 8.

(2) Property owned by a closely held business is considered as being owned proportionately by or for its shareholders, partners, or owners.

(3) For the purposes of this section, "tangible personal property" means property, other than intangible property as defined in 72-16-101, that is owned by a closely held business. The term does not include an ownership interest in the closely held business.

History: En. Sec. 1, Ch. 288, L. 1997.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 6, Ch. 288, L. 1997, provided: "[This act] [72-16-101, 72-16-323, 72-16-453, and 72-16-455] is effective on passage and approval [approved April 18, 1997] and applies retroactively, within the meaning of 1-2-109, to estates of persons who die after December 31, 1996."

72-16-324 through 72-16-330 reserved.

72-16-331. Definitions for alternate valuation purposes. As used in 72-16-331 through 72-16-349, the following definitions apply:

(1) "Active management" means making management decisions of a business, other than the daily operating decisions.

(2) "Adjusted value" means:

(a) in the case of a gross estate, the gross value of all transfers subject to the tax imposed by this part, determined without regard to 72-16-331 through 72-16-349, reduced by the amount of unpaid mortgages and indebtedness;

(b) in the case of real or personal property, the value of the property for the purposes of this part, determined without regard to 72-16-331 through 72-16-349, reduced by the amount of unpaid mortgages and indebtedness.

(3) "Agreement" means a written agreement signed by each person in being who has an interest, whether or not the person is in possession, in any property designated in the agreement consenting to the application of 72-16-333 with respect to the property.

(4) "Department" means the department of revenue.

(5) "Disabled" means an individual who has a mental or physical impairment that renders the person unable to materially participate in the operation of a farm or other business.

(6) "Eligible qualified heir" means a qualified heir who:

(a) is the surviving spouse of the decedent;

(b) has not attained 21 years of age;

(c) is disabled; or

(d) is a student.

(7) "Farm" means truck farms, ranches, nurseries, ranges, greenhouses, orchards, woodlands, or structures used primarily for raising agricultural or horticultural commodities. The term includes stock, dairy animals, poultry, fur-bearing animals, and fruit.

(8) "Farming purposes" means:

(a) cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and managing of animals on a farm;

(b) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; or

(c) (i) planting, cultivating, caring for, or cutting trees; or

(ii) preparing, other than milling, trees for market.

(9) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(10) "Involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033 of the Internal Revenue Code (26 U.S.C. 1033).

(11) "Material participation" is determined in a manner similar to the manner used for the purposes of section 1402(a)(1) of the Internal Revenue Code (26 U.S.C. 1402(a)(1)).

(12) (a) "Member of the family" means, with respect to any individual:

(i) the individual's ancestor;

(ii) the individual's spouse and the lineal descendants of the individual's spouse;

(iii) the individual's lineal descendant;

(iv) the lineal descendants of the individual's parents.

(b) Member of the family also includes a spouse of:

(i) the individual's lineal descendants;

(ii) the lineal descendants of the individual's spouse; or

(iii) the lineal descendants of the individual's parents.

(c) For purposes of this subsection (12), a legally adopted child of an individual is treated as a child of the individual by blood.

(13) "Net share rental" means the excess of:

(a) the value of the produce received by a lessor of land on which the produce is grown;

(b) divided by the cash operating expenses of growing such produce that, under the lease, are paid by the lessor.

(14) "Qualified exchange property" means real property that is to be used for the qualified use set forth in subsection (18).

(15) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired the property or to whom the property passed from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of the qualified heir's family, the member must thereafter be treated as the qualified heir with respect to the interest.

(16) "Qualified real property" means real property located in this state that was acquired from or passed from the decedent to a qualified heir of the decedent and that on the date of the decedent's death was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(a) 50% or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property that:

(i) on the date of the decedent's death was being used for a qualified use by the decedent or a member of the decedent's family; and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent;

(b) 25% or more of the adjusted value of the gross estate consists of the adjusted value of real property that meets the requirements of subsections (16)(a)(ii) and (16)(c);

(c) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which:

(i) the real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business;

(d) the real property is designated in the agreement referred to in subsection (3); and

(e) if an election is made with respect to qualified woodland, trees growing on the woodland may not be treated as a crop.

(17) (a) "Qualified replacement property" means:

(i) in the case of an involuntary conversion as described in section 1033(a)(1) of the Internal Revenue Code (26 U.S.C. 1033(a)(1)), any real property into which the real property is converted;

(ii) in the case of an involuntary conversion as described in section 1033(a)(2) of the Internal Revenue Code (26 U.S.C. 1033(a)(2)), any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(A) of the Internal Revenue Code (26 U.S.C. 1033(a)(2)(A)) for the purpose of replacing the qualified real property.

(b) The term includes only property that is to be used for the qualified use set forth in subsection (18)(a) or (18)(b) of this section under which the qualified real property qualified under 72-16-333.

(18) (a) "Qualified use" means devotion of the property to any of the following:

(i) use as a farm for farming purposes; or

(ii) use in a trade or business other than the trade or business of farming.

(b) In the case of real property that meets the requirements of subsection (16)(c), residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use must be treated as real property devoted to the qualified use.

(19) "Qualified woodland" means any real property that:

(a) is used in timber operations; and

(b) is an identifiable area of land, such as an acre or other area, for which records are normally maintained in conducting timber operations.

(20) "Student" means an individual as defined by section 151(e)(4) of the Internal Revenue Code (26 U.S.C. 151(e)(4)).

(21) "Timber operations" means:

(a) the planting, cultivating, caring for, or cutting of trees; or

(b) the preparation, other than milling, of trees for market.

History: En. Sec. 1, Ch. 705, L. 1979; amd. Sec. 185, Ch. 575, L. 1981; amd. Sec. 2, Ch. 511, L. 1983; amd. Sec. 260, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in definitions of involuntary conversion, material participation, qualified replacement property (three places), and student inserted parenthetical references to sections of the Internal Revenue Code; in definition of member of the family, in introductory language of (a), deleted "the individual's" and at beginning of (a)(i), (a)(ii), and (a)(iii) inserted "the individual's"; and made minor changes in style. Amendment effective March 12, 1997.

72-16-332. Property acquired from decedent defined. Property is considered to have been acquired from the decedent if the property:

(1) is so considered under section 1014(b) of the Internal Revenue Code;

(2) is acquired by any person from the estate; or

(3) is acquired by any person from a trust to the extent the property is includable in the gross estate of the decedent.

History: En. Sec. 9, Ch. 705, L. 1979; amd. Sec. 3, Ch. 511, L. 1983.

72-16-333. Alternate valuation of certain farm or business real property — limitation. (1) If the decedent was at the time of his death a resident of this state and the personal representative elects to have 72-16-331 through 72-16-349 apply and files an agreement with the department, the value of qualified real property for the purposes of the tax imposed by this part is its value for the use under which it qualifies under 72-16-331(16) as qualified real property.

(2) The aggregate decrease in the value of qualified real property taken into account for the purposes of the Montana inheritance tax that results from the application of subsection (1) may not exceed $500,000 in the case of a decedent dying prior to October 1, 1983, and may not exceed $750,000 for decedents dying thereafter.

History: En. Sec. 2, Ch. 705, L. 1979; amd. Sec. 4, Ch. 511, L. 1983.

72-16-334. Election of alternate valuation. An election for valuation under 72-16-331 through 72-16-349 must be made within 18 months of the date of the decedent's death and must be made in such manner as the department may prescribe. The election, once made, is irrevocable.

History: En. Sec. 3, Ch. 705, L. 1979; amd. Sec. 5, Ch. 511, L. 1983.

72-16-335. Valuation of farms. (1) Except as provided in subsection (3), the value of a farm for farming purposes is determined by dividing the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of the farm over the average annual state and local real estate taxes for comparable land by the average annual effective interest rate for all new federal land bank loans. For purposes of the preceding sentence, each average annual computation must be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(2) If there is no comparable land from which the annual average gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, when subsection (1) is applied, "average annual net share rental" must be substituted for "average annual gross cash rental".

(3) The formula in subsections (1) and (2) may not be used:

(a) if it is established that there is no comparable land from which the average annual gross cash rental may be determined and that there is no comparable land from which the average net share rental may be determined; or

(b) if the personal representative elects to have the value of the farm for farming purposes determined under 72-16-336.

History: En. Sec. 4, Ch. 705, L. 1979; amd. Sec. 6, Ch. 511, L. 1983.

72-16-336. Valuation of closely held business interests. If 72-16-335 does not apply, the following factors apply in determining the value of any qualified real property:

(1) The capitalization of income that the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors;

(2) the capitalization of the fair rental value of the land for farmland or closely held business purposes;

(3) assessed land values;

(4) comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price; and

(5) any other factor that fairly values the farm or closely held business value of the property.

History: En. Sec. 5, Ch. 705, L. 1979.

72-16-337. Application to certain business interests — department rules. (1) The department shall prescribe regulations setting forth the application of 72-16-331 through 72-16-349 in the case of an interest in a partnership, corporation, or trust that, with respect to the decedent, is an interest in a closely held business within the meaning of 72-16-453.

(2) For the purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs must be treated as a present interest.

History: En. Sec. 11, Ch. 705, L. 1979; amd. Sec. 7, Ch. 511, L. 1983.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

72-16-338. Disposition or failure to use for qualified use — additional tax. (1) There is hereby imposed an additional inheritance tax if within 10 years after the decedent's death and before the death of the qualified heir:

(a) the qualified heir disposes of any interest in qualified real property other than by a disposition to a member of his family; or

(b) the qualified heir ceases to use for the qualified use the qualified real property which was acquired or passed from the decedent.

(2) The amount of additional tax imposed by subsection (1) with respect to any interest is the amount equal to the lesser of:

(a) the adjusted tax difference attributable to such interest; or

(b) the excess of the amount realized with respect to the interest or, in any case other than a sale or exchange at arm's length, the fair market value of the interest over the value of the interest determined under 72-16-333.

(3) For the purposes of subsection (2), the adjusted tax difference attributable to an interest is the amount that bears the same ratio to the adjusted tax difference with respect to the estate as determined under subsection (4) as the excess of the value of such interest for purposes of the Montana inheritance tax, determined without regard to 72-16-331 through 72-16-349, over the value of such interest determined under 72-16-333 bears to a similar excess determined for all qualified real property.

(4) For the purposes of subsection (3), "adjusted tax difference with respect to the estate" means the excess of what would have been the tax liability but for 72-16-333 over the tax liability. For the purposes of this subsection, "tax liability" means the tax imposed by Title 72, chapter 16.

(5) For the purposes of this section, if the qualified heir disposes of a portion of the interest acquired by or passing to such heir or a predecessor qualified heir or there is a cessation of use of such a portion, the value determined under 72-16-333 taken into account under subsection (2)(b) of this section with respect to such portion shall be its pro rata share of the value of the interest and the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this section with respect to all prior transactions involving portions of the interest.

(6) In the case of an interest acquired from or passing from any decedent, if subsection (1)(a) or (1)(b) applies to any portion of an interest, subsection (1)(a) or (1)(b), as the case may be, does not apply with respect to the same portion of the interest.

(7) The additional tax imposed by this section is due on the day that is 6 months after the date of the disposition or cessation.

(8) The qualified heir is personally liable for the additional tax with respect to his interest unless the heir has furnished bond that meets the requirements of 72-16-340.

History: En. Sec. 7, Ch. 705, L. 1979; amd. Sec. 8, Ch. 511, L. 1983.

72-16-339. When cessation of qualified use occurs. For the purposes of 72-16-338, real property ceases to be used for the qualified use if:

(1) the property ceases to be used for the qualified use set forth in 72-16-331 under which the property qualified under 72-16-331; or

(2) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating more than 3 years during which:

(a) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business; and

(b) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

History: En. Sec. 8, Ch. 705, L. 1979; amd. Sec. 9, Ch. 511, L. 1983.

72-16-340. Notice to heir of additional tax — bond in lieu of personal liability. (1) If the qualified heir makes written application to the department for the determination of the additional tax that may be imposed by 72-16-338 with respect to the qualified heir's interest, the department must, as soon as possible and in any event within 1 year after the making of the application, notify the heir of the maximum amount.

(2) The qualified heir, on furnishing a bond in such amount and for such period as may be required, is discharged from personal liability for any additional tax imposed by 72-16-338 and is entitled to a receipt or writing showing such discharge.

History: En. Sec. 10, Ch. 705, L. 1979.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-16-341. Involuntary conversion of qualified real property. (1) If there is an involuntary conversion of an interest in qualified real property, no tax is imposed by 72-16-338 on the conversion if the cost of the qualified replacement property equals or exceeds the amount realized on the conversion.

(2) If subsection (1) does not apply, the tax imposed by 72-16-338, with respect to any involuntary conversion, is the amount of tax that, but for this subsection, would have been imposed on the conversion reduced by an amount that bears the same ratio to such tax as the cost of the qualified replacement property bears to the amount realized on the conversion.

(3) (a) For the purposes of 72-16-338, any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in

qualified real property that was involuntarily converted, except that with respect to such qualified replacement property, the 10-year period under 72-16-338 shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i) of the Internal Revenue Code, during which the qualified heir was allowed to replace the qualified real property.

(b) Any tax imposed by 72-16-338 on the involuntary conversion shall be treated as a tax imposed on a partial disposition. The provisions of 72-16-339 shall be applied by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property and by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(4) The rules of the last sentence of section 1033(a)(2)(B) of the Internal Revenue Code apply for the purposes of 72-16-331(17)(a)(ii).

History: En. Sec. 12, Ch. 705, L. 1979; amd. Sec. 10, Ch. 511, L. 1983.

72-16-342. Time limitations on assessment of additional tax. (1) If qualified real property is disposed of or ceases to be used for a qualified use, the statutory period for the assessment of any additional tax under 72-16-338 attributable to disposition or cessation may not expire until 3 years after the date the department is notified, in a manner to be prescribed by the department, of the disposition or cessation or, in the case of an involuntary conversion or exchange in which 72-16-341 or 72-16-348 applies, 3 years from the date the department is notified of the replacement of the converted property or of an intention to replace or exchange the property.

(2) The additional tax may be assessed before the expiration of the 3-year period referred to in subsection (1), notwithstanding the provisions of any other law or rule of law that would otherwise prevent such assessment.

History: En. Sec. 6, Ch. 705, L. 1979; amd. Sec. 11, Ch. 511, L. 1983.

72-16-343. Special rules for surviving spouses. (1) If property is qualified real property with respect to a decedent, hereinafter in this subsection referred to as the "first decedent", and the property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this section and 72-16-339 in the case of the estate of such surviving spouse, active management of a farm or other business by the surviving spouse must be treated as material participation by the surviving spouse in the operation of the farm or business.

(2) For the purposes of subsection (1), the determination of whether property is qualified real property with respect to the first decedent must be made without regard to whether an election under 72-16-334 was made.

History: En. Sec. 17, Ch. 511, L. 1983.

72-16-344. Decedents who are retired or disabled. (1) If on the date of the decedent's death, the requirements of 72-16-331(16)(c)(ii) with respect to the decedent for any property are not met and the decedent either was receiving old-age benefits under Title II of the Social Security Act for a continuous period ending on the date of death or was disabled for a continuous period ending on the date of death, then 72-16-331(16)(c) must be applied with respect to such property by substituting "the date on which the longer of the continuous periods described in this subsection began" for "the date of the decedent's death" in 72-16-331(16)(c).

(2) For purposes of 72-16-339(2)(a), if the requirements of 72-16-331(16)(c)(ii) are met with respect to any decedent by reason of subsection (1), the period ending on the date on which the continuous period taken into account under subsection (1) began must be treated as the period immediately before the decedent's death.

History: En. Sec. 18, Ch. 511, L. 1983.

72-16-345. Active management by eligible qualified heir treated as material participation. (1) For purposes of 72-16-339, the active management of a farm or other business by an eligible qualified heir or a fiduciary of an eligible qualified heir must be treated as a material participation by the eligible qualified heir in the operation of the farm or business.

(2) In the case of an eligible qualified heir, subsection (1) applies only during periods during which the heir continues to be an eligible qualified heir.

History: En. Sec. 19, Ch. 511, L. 1983.

72-16-346. No tax if use begins within two years. If the date on which the qualified heir begins to use the qualified real property, hereinafter referred to as the commencement date, is before the date 2 years after the decedent's death:

(1) no tax may be imposed under 72-16-338 by reason of the failure by the qualified heir to so use such property before the commencement date; and

(2) the 10-year period under 72-16-338 must be extended by the period between the decedent's death and the commencement date.

History: En. Sec. 20, Ch. 511, L. 1983.

72-16-347. Special rule for disposition of timber. In the case of qualified woodland to which an election under 72-16-334 applies, if the qualified heir disposes of or severs any standing timber on the qualified woodland:

(1) the disposition or severance is treated as a disposition of a portion of the interest of the qualified heir in the property; and

(2) the additional tax imposed by 72-16-338 with respect to the disposition is an amount equal to the lesser of:

(a) the amount realized on the disposition or, in any case other than a sale or exchange at arm's length, the fair market value of the portion of the interest disposed or severed; or

(b) the amount of additional tax determined under this section, without regard to this subsection (2)(b), if the entire interest of the qualified heir in the qualified woodland had been disposed of, less the sum of the amount of the additional tax imposed with respect to all prior transactions involving the woodland to which subsection (2) applied.

(3) For purposes of subsection (2), the disposition of a right to sever is treated as the disposition of the standing timber. The amount of additional tax imposed under 72-16-338 in a case in which a qualified heir disposes of his entire interest in the qualified woodland must be reduced by any amount determined under this section with respect to such woodland.

History: En. Sec. 21, Ch. 511, L. 1983.

72-16-348. Exchanges of qualified real property. (1) If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction that qualifies under section 1031 of the Internal Revenue Code, no tax may be imposed by 72-16-338 by reason of the exchange.

(2) If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction that qualifies under section 1031 of the Internal Revenue Code, the amount of the tax imposed by 72-16-338 by reason of the exchange must be the amount of tax that would have been imposed on the exchange under 72-16-338, without regard to this section, reduced by an amount which bears the same ratio to such tax as the fair market value of the other property bears to the fair market value of the qualified real property exchanged. Fair market value must be determined as of the time of the exchange.

(3) For purposes of 72-16-338:

(a) any interest in qualified exchange property must be treated in the same manner as if it were a portion of the interest in qualified real property that was exchanged;

(b) any tax imposed by 72-16-338 by reason of the exchange must be treated as a tax imposed on a partial disposition; and

(c) 72-16-338 must be applied by treating material participation with respect to the exchanged property as material participation with respect to the qualified exchange property.

History: En. Sec. 22, Ch. 511, L. 1983.

72-16-349. Treatment of replacement property acquired in transactions under section 1031 or 1033 of the Internal Revenue Code. (1) Except as provided in subsection (2) in the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of his family must be treated as a period during which there was such ownership, use, or material participation with respect to the qualified replacement property.

(2) Subsection (1) does not apply to the extent that the fair market value of the qualified replacement property, as of the date of its acquisition, exceeds the fair market value of the replaced property, as of the date of its disposition.

(3) For purposes of this section:

(a) the term "qualified replacement property" means any real property:

(i) that is acquired in an exchange which qualifies under section 1031 of the Internal Revenue Code;

(ii) the acquisition of which results in the nonrecognition of gain under section 1033 of the Internal Revenue Code; or

(iii) that is used for the same qualified use as the replaced property was being used before the exchange;

(b) the term "replaced property" means:

(i) the property transferred in the exchange that qualifies under section 1031 of the Internal Revenue Code; or

(ii) the property compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code.

History: En. Sec. 23, Ch. 511, L. 1983.

Part 4

Determination and Payment of Tax

72-16-401. Application for determination of tax by department — information, documents to be furnished to department. (1) The personal representative or, should the personal representative fail to do so, any interested person shall make application to the department of revenue for determination of any tax due upon the estate of a decedent.

(2) The applicant shall furnish to the department the inventory and appraisement required by 72-3-607 and any supplemental inventory under 72-3-609, together with a statement under oath or affirmation of any property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction. The applicant shall, upon request of the department, furnish the department with the final accounting of such personal representative. If the decedent died testate, the personal representative shall likewise furnish the department with a certified copy of the last will of the decedent. If the decedent died intestate, the personal representative shall provide the department with a sworn statement setting forth the names, ages, and residences of the heirs at law of decedent. In all cases, the personal representative shall set forth the proportion of the entire estate inherited by or devised to each of said persons and the relation, if any, which each devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made.

(3) The information so provided shall not be binding upon the department in case it believes the same to be erroneous or untrue.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-402. Department to determine tax. From the information so furnished the department of revenue and such other information as it may be able to obtain with reference thereto, the department shall with reasonable diligence proceed to ascertain and determine the amount of tax, if any, due under the provisions of the inheritance tax laws of the state of Montana, and a copy of such determination shall be mailed to the personal representative and to the clerk of the appropriate district court. If no tax is due, the department shall likewise so inform the clerk of district court and the personal representative.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-403. Appeal of department's determination — notice — determination by court. (1) Should the personal representative or any person affected by the determination of inheritance tax feel aggrieved by the department of revenue's determination, he may, within 60 days after the filing of the copy of such determination with the clerk of district court, appeal the determination to the appropriate district court by serving upon the department his objections to such determination and by filing such notice after so serving the same in the office of the clerk of such court.

(2) The court shall set a day for hearing such appeal upon 10 days' notice to all interested parties and at the time and place set shall hear the appeal upon all papers and records which may be properly presented before it and shall as

soon as possible thereafter issue its order determining the amount of such inheritance tax, if it finds a tax to be due.

History: En. 91-4468 by Sec. 4, Ch. 365, L. 1974; amd. Sec. 9, Ch. 516, L. 1975; R.C.M. 1947, 91-4468(part).

72-16-404 through 72-16-410 reserved.

72-16-411. Special appraiser — appointment. The district court, upon the application of any interested party, including the department of revenue, shall appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by parts 1 through 8.

History: En. Sec. 13, Ch. 65, L. 1923; amd. Sec. 2, Ch. 141, L. 1927; re-en. Sec. 10400.17, R.C.M. 1935; amd. Sec. 84, Ch. 391, L. 1973; R.C.M. 1947, 91-4427.

72-16-412. Powers and duties of appraiser. (1) Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the department of revenue, and to such persons as the district court may by order direct of the time and place when he will appraise such property.

(2) He shall, at such time and place, appraise the same at its fair market value, as herein prescribed; and for that purpose the appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof. He shall make report thereof and of such value in writing to the district court, together with the depositions of the witnesses examined and such other facts in relation thereto and to the matter as the district court may order or require.

(3) The report of the special appraiser shall be made in triplicate, and not less than 10 days before the hearing thereon one of said triplicates shall be filed in the office of the district court, one to the administrator or the executor, and the other shall be mailed to the department.

History: (1), (2)En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; re-en. Sec. 10400.18, R.C.M. 1935; amd. Sec. 85, Ch. 391, L. 1973; Sec. 91-4428, R.C.M. 1947; (3)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.19, R.C.M. 1935; amd. Sec. 86, Ch. 391, L. 1973; Sec. 91-4429, R.C.M. 1947; R.C.M. 1947, 91-4428(part), 91-4429(part).

Cross-References

Depositions, Rule 27, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas and witnesses, Title 26, ch. 2.

72-16-413. Compensation and expenses of appraiser and witnesses. Every appraiser shall be paid on the certificate of the district court at the rate of not to exceed $10 per day for every day actually and necessarily employed in such appraisal and shall receive his actual and necessary traveling expenses, and witnesses shall be allowed the same fees as are allowed witnesses in civil actions in courts of record and the same shall be paid by the executor, administrator, or trustee of such estate in the same manner as provided for the payment of other administration expenses.

History: En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; re-en. Sec. 10400.18, R.C.M. 1935; amd. Sec. 85, Ch. 391, L. 1973; R.C.M. 1947, 91-4428(part).

Cross-References

Travel, meals, and lodging, Title 2, ch. 18, part 5.

Witness fees, Title 26, ch. 2, part 5.

72-16-414. Appraisal to be at clear market value at time of death. Whenever a transfer of property is made upon which there is or in any contingency there may be a tax imposed, such property shall be appraised at its clear market value existing at the date of death of the transferor, which appraisement shall be made as soon thereafter as practicable.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.22, R.C.M. 1935; amd. Secs. 1 and 2, Ch. 101, L. 1947; R.C.M. 1947, 91-4432(part).

72-16-415. Hearing by court. At the time and place of hearing the administration account, the district court shall examine the report of the special appraiser and from the report and other proofs relating to any such estate shall forthwith determine the cash value of such estate and the amount of tax to which the same is liable; or the district court, without appointing such appraiser, may at the time so fixed hear the evidence and determine the cash value of such estate and the amount of tax to which the same is liable.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.19, R.C.M. 1935; amd. Sec. 86, Ch. 391, L. 1973; R.C.M. 1947, 91-4429(part).

72-16-416. Notice of hearing — application for exclusion to accompany notice. (1) Notice of such hearing to determine the inheritance tax shall be given in the manner and for the time provided in 72-1-301 to all interested persons and to the department of revenue.

(2) A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the department not less than 15 days before such hearing upon notice forms provided by the department and containing such information as it may require.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.20, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1949; amd. Sec. 87, Ch. 391, L. 1973; amd. Sec. 7, Ch. 365, L. 1974; R.C.M. 1947, 91-4430.

72-16-417. Future, contingent, or limited estates — duty of insurance commissioner — method of valuation. (1) The commissioner of insurance shall, on application of any district court or of the department of revenue, determine the value of any such future or contingent estates, income, or interests therein limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being, upon the facts contained in the district court's finding and determination and contained in such special appraiser's report, and upon the facts certify the same to the district court or to the department, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

(2) The value of every future or limited estate, income, interest, or annuity dependent upon any life or lives in being shall be determined by the rule, method, and standard of mortality and value employed by the commissioner of insurance of the state of Montana in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be 5% per annum. The tax so determined shall be construed to be upon the transfer of a proportion of the principal or corpus of the estate equal to the

present value of such future or limited estate, income, interest, or annuity and not upon any earnings or income of said property produced after death.

(3) Such tax shall be due and payable forthwith, except as otherwise provided in parts 1 through 8.

History: (1)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.21, R.C.M. 1935; amd. Sec. 88, Ch. 391, L. 1973; Sec. 91-4431, R.C.M. 1947; (2), (3)En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.22, R.C.M. 1935; amd. Secs. 1 and 2, Ch. 101, L. 1947; Sec. 91-4432, R.C.M. 1947; R.C.M. 1947, 91-4431, 91-4432(part).

72-16-418. Contingent encumbrances — no allowance for — return if takes effect. (1) In estimating the value of any estate or interest in property to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent encumbrance thereon or in respect of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated, or diminished.

(2) In the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat, or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the encumbrance when taking effect or so much as will reduce the same to the amount which would have been assessed in respect to the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided in 72-16-439 and 72-16-442.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.23, R.C.M. 1935; R.C.M. 1947, 91-4433.

72-16-419. Tax payable forthwith on contingent estate — lowest rate. When property is transferred in trust or otherwise and the rights, interests, or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon such transfer at the lowest rate which, on the happening of any of the contingencies or conditions, would be possible under the provisions of parts 1 through 8, and such tax so imposed shall be due and payable forthwith out of the property transferred. However, on the happening of any contingency or condition whereby the property or any part thereof is transferred to a person or corporation which under the provisions of parts 1 through 8 is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in parts 1 through 8.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.25, R.C.M. 1935; R.C.M. 1947, 91-4435.

72-16-420. Estate for life or years subject to divesting — how taxed. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.26, R.C.M. 1935; R.C.M. 1947, 91-4436(part).

72-16-421. Appraisal of contingent or defeasible estate when tax postponed. Estates in expectancy which are contingent or defeasible and in which proceedings for determination of the tax have not been taken or where the taxation thereof has been held in abeyance shall be appraised at their full undiminished clear value when the person entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation upon which said estates in expectancy may have been limited.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.26, R.C.M. 1935; R.C.M. 1947, 91-4436(part).

72-16-422. Court order determining tax — contents — form. (1) When the district court shall be required to make a determination of the value of any estate which is taxable under the inheritance tax laws and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of:

(a) the date of death of the decedent;

(b) the gross value of the real and personal property of such estate, stating the principal items thereof;

(c) the deductions therefrom allowed by the court;

(d) the names and relationship of the persons entitled to receive the same, with the amount received by each;

(e) the rates and amounts of inheritance tax for which each such person is liable and the total amount of tax to be paid;

(f) the amount of interest or penalty due, if any.

(2) Such order shall be substantially in the form prescribed by the department of revenue.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.27, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973; amd. Sec. 8, Ch. 365, L. 1974; R.C.M. 1947, 91-4437(part).

72-16-423. Court order to be delivered and taxes paid before final judgment in estate. A copy of the court order referred to in 72-16-422 shall be delivered or mailed to the county treasurer, the administrator or executor, and the department of revenue, and no final judgment may be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed and receipts are filed with the court showing the payment of all such taxes or proof is filed showing that the permission for deferral of payment authorized by 72-16-438 has been given.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.27, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973; amd. Sec. 8, Ch. 365, L. 1974; R.C.M. 1947, 91-4437(part); amd. Sec. 24, Ch. 6, L. 1979.

72-16-424. Rehearing of court determination within sixty days. When an appraisement, assessment, or determination of tax is made by a district court, the attorney general, department of revenue, public administrator, county attorney, or any person dissatisfied with the appraisement or assessment and determination of such tax may apply for a rehearing thereof before the district court within 60 days from the fixing, assessing, and determination of the tax by the district court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearing as herein provided unless additional or newly discovered evidence be alleged therefor, and a new trial shall not be had or granted unless specially ordered by the district court.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.28, R.C.M. 1935; amd. Sec. 90, Ch. 391, L. 1973; amd. Sec. 9, Ch. 365, L. 1974; R.C.M. 1947, 91-4438.

72-16-425. Reappraisal within one year — appointment of appraiser — procedure. (1) Within 1 year after the entry of an order or decree of the district court determining the value of an estate and assessing the tax thereon, the attorney general or the department of revenue may, if he or it believes that such appraisal, assessment, or determination has been erroneously, fraudulently, or collusively made, make application to the district judge for a reappraisal thereof.

(2) The district court to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice, and receive the compensation provided by 72-16-412 through 72-16-425, inclusive. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of parts 1 through 8, upon the certificate of the district judge.

(3) The report of such appraiser shall be filed in the office of the clerk of the district court, and thereafter the same proceedings shall be taken and had by and before such district court as herein provided to be taken and had by and before the court.

(4) The determination and assessment of such district court shall supersede the former determination and assessment of such court and shall be filed in the office of the county treasurer, state treasurer, and department of revenue.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; re-en. Sec. 10400.29, R.C.M. 1935; amd. Sec. 91, Ch. 391, L. 1973; R.C.M. 1947, 91-4439.

72-16-426 through 72-16-430 reserved.

72-16-431. Tax — when due and payable. All taxes imposed by parts 1 through 8 shall be due and payable at the time of the death of the decedent, except as hereinafter provided.

History: En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part).

72-16-432. Tax lien — continuing personal liability — filing of warrant for distraint. (1) All property which is affected by the death of the decedent and on which inheritance, estate, or death taxes are due under the laws of this state is subject to the lien of the state of Montana until such taxes have been paid. This lien follows all property sold in the course of administration or distributed under chapters 1 through 5 until such time as all inheritance taxes have been paid and a receipt showing payment thereof has been filed with the clerk of court, subject to subsection (2).

(2) Every such tax shall be and remain a lien upon the property transferred for a period of 10 years from the time of the death of the decedent, whether said death occurred before or after July 1, 1965, unless sooner paid.

(3) The person to whom the property is transferred and the personal representatives and trustees of every estate so transferred shall be personally liable for such tax until its payment.

(4) (a) The lien provided for in subsection (1) shall be perfected by the filing of a warrant for distraint by the department of revenue with the clerk of a district court in the county in which the estate is being administered or in a county where any of the estate property is located or has been transported.

(b) The warrant shall be filed 60 days after the department has determined the amount of any tax or, if the department's determination has been appealed to the district court, the warrant shall be filed after the court's determination has become final.

(c) The procedures provided for a hearing before execution of a warrant for distraint contained in 15-1-705 do not apply to warrants filed under this section.

(5) The department or the sheriff of a county to whom a writ of execution is directed may proceed to execute upon the warrant in the same manner as prescribed for the execution upon a judgment, except that execution may be had as a matter of right for a period of 10 years, as provided in subsection (2).

History: (1)En. 91A-3-1010 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 8, Ch. 516,L. 1975; Sec. 91A-3-1010, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; Sec. 91-4415, R.C.M. 1947; R.C.M. 1947, 91-4415(part), 91A-3-1010(part); amd. Sec. 2, Ch. 131, L. 1989.

Cross-References

Collection of delinquent taxes — warrant for distraint, Title 15, ch. 1, part 7.

Warrant for distraint — issuance, 15-1-702.

72-16-433. Department consent to transfer free of lien. The department of revenue may issue a consent to transfer any real or personal property in the estate of a decedent free of the lien for unpaid inheritance taxes upon proper application and under such rules as the department shall prescribe.

History: En. 91A-3-1010 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 8, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-1010(part).

72-16-434. Method of payment and receipt. (1) The tax shall be paid to the department of revenue for transmittal to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided or to the treasurer of the county of residence of the decedent if a court proceeding is not involved.

(2) If paid to the county treasurer said treasurer shall receipt therefor making five copies thereof and distribute said copies as follows:

(a) original receipt, to the clerk of the district court;

(b) first copy, to the personal representative, trustee, or person paying said tax;

(c) second copy, attached to and mailed with the report required by 72-16-215, as amended, to the department of revenue;

(d) third copy, to the county clerk and recorder;

(e) fourth copy, retained by the treasurer on file in his office.

(3) The copy of the receipt given to the personal representative or trustee shall be a proper voucher in the settlement of his accounts.

History: En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part).

72-16-435. Receipts — form and contents — recording. (1) Any person shall be entitled to a receipt from the county treasurer of any county or the state treasurer or, at his option, to a copy of a receipt that may have been given by such county treasurer or state treasurer for the payment of any tax under parts 1 through 8, under the official seal of such county treasurer or state treasurer, which receipt shall designate upon whose estate such tax shall have been paid, by whom, and whether in full of such tax.

(2) Such receipt may be recorded in the office of the county recorder of the county in which such estate is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax".

History: En. Sec. 21, Ch. 65, L. 1923; re-en. Sec. 10400.42, R.C.M. 1935; R.C.M. 1947, 91-4452.

72-16-436. Powers and duties of representative in collection and payment of tax. (1) Every personal representative shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such personal representative having in charge or in trust any property for distribution subject to such tax shall deduct the tax therefrom and within 30 days therefrom shall pay over the same to the county treasurer, as herein provided.

(2) If such property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific property subject to tax under this law to any person until he shall have collected the tax thereon. If any such devise shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the personal representative, and the tax shall remain a lien or charge on such real property for the period provided in 72-16-432, and the payment thereof shall be enforced by the personal representative in the same manner that payment of the devise might be enforced or by the attorney general under 72-16-443. If any such devise shall be given in money to any such person for a limited period, the personal representative shall retain the tax upon the whole amount, but if it be not in money and agreement as to apportionment cannot be reached by him with the devisee or devisees affected, he shall make application to the appropriate court to make an apportionment, if the case require it, of the sum to be paid into the hands of such devisees and for such further order relative thereto as the case may require, such application being treated as a supervised proceeding.

History: En. Sec. 7, Ch. 65, L. 1923; re-en. Sec. 10400.7, R.C.M. 1935; amd. Sec. 2, Ch. 99, L. 1965; amd. Sec. 5, Ch. 365, L. 1974; R.C.M. 1947, 91-4417.

72-16-437. Personal representative not entitled to closing unless tax paid or deferred. No personal representative or trustee is entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of parts 1 through 8 unless he produces such receipt or a certified copy thereof or unless permission for deferral of payment has been granted as provided in 72-16-438.

History: **En. Sec. 5, Ch. 65, L. 1923; re-en. Sec. 10400.5, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77, Ch. 391, L. 1973; amd. Sec. 2, Ch. 424, L. 1975; R.C.M. 1947, 91-4415(part); amd. Sec. 25, Ch. 6, L. 1979.**

72-16-438. Permission for deferred payment of tax. Any beneficiary of any property chargeable with a tax under 72-16-301 through 72-16-304 and 72-16-307 and any personal representative or trustee of the estate may request, within 18 months from the date of the death of decedent or transfer of the property, permission not to pay such tax or a portion thereof until the person beneficially interested comes into the actual possession or enjoyment thereof or until payment can be made without liquidating a portion of the capital assets. The department may permit the deferral of payment for not more than 5 years, upon such conditions and terms as the department considers necessary to assure payment.

History: **En. Sec. 9, Ch. 65, L. 1923; re-en. Sec. 10400.9, R.C.M. 1935; amd. Sec. 79, Ch. 391, L. 1973; amd. Sec. 6, Ch. 490, L. 1977; R.C.M. 1947, 91-4419.**

72-16-439. Advance payment — relief from interest or penalty — discount — refund of excess paid. (1) Any person from whom such tax is or may be due may make an estimate of and pay the same to the county treasurer, who shall receipt therefor, at any time before the same is determined by the department of revenue and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined.

(2) In the event the person making payment has done so in accordance with the provisions of 72-16-440 pertaining to the allowance of a 5% discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the 5% discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by paying the amount estimated by the taxpayer to the county treasurer.

(3) The money shall be paid to the county treasurer, who shall pay the money to the state treasurer on or before the 20th day of the month following the collection.

(4) As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by the department.

History: **En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; re-en. Sec. 10400.8, R.C.M. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973; amd. Sec. 3, Ch. 424, L. 1975; R.C.M. 1947, 91-4418(part); amd. Sec. 1, Ch. 136, L. 1989.**

72-16-440. Discount for prompt payment. If the tax is paid within 18 months of the death of the decedent, a discount of 5% shall be deducted therefrom. The deduction of this discount of 5% shall be accomplished by paying within the 18-month period from the date that the tax accrues an amount equal to 95% of the total tax declared due by the person making payment.

History: **En. Sec. 6, Ch. 65, L. 1923; re-en. Sec. 10400.6, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1967; amd. Sec. 5, Ch. 490, L. 1977; R.C.M. 1947, 91-4416(1).**

72-16-441. Interest on overdue payments. (1) If such tax is not paid within 18 months of the death of the decedent, interest shall be charged and collected thereon at the rate of 10% a year from the time the tax accrued, unless because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay the tax is not determined and paid as herein provided, in which case interest at the rate of 6% shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which time 10% shall be charged.

(2) Litigation to defeat the payment of the tax is not necessary litigation.

(3) When permission has been granted to defer payment of tax under 72-16-438, interest shall be charged at the rate of 6% after 1 year from the date of death until the date of payment thereof.

History: En. Sec. 6, Ch. 65, L. 1923; re-en. Sec. 10400.6, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1967; amd. Sec. 5, Ch. 490, L. 1977; R.C.M. 1947, 91-4416(2).

72-16-442. Refund of tax when debt against estate proved after distribution. If any debt shall be proved against the estate of the decedent after the payment of any legacy or distributive share thereof from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the personal representative or trustee, if the tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; re-en. Sec. 10400.8, R.C.M. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973; amd. Sec. 3, Ch. 424, L. 1975; R.C.M. 1947, 91-4418(part).

72-16-443. Collection of unpaid taxes. (1) If any county treasurer, the state treasurer, or the department of revenue has reason to believe that any tax is due and unpaid under the provisions of parts 1 through 8, after the refusal or neglect of any person liable therefor to pay the same, he or it shall notify the attorney general in writing of such failure or neglect; and the attorney general, if he has probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than 3 months from the date of such citation, and show cause why the tax should not be paid.

(2) The judge of the district court, upon such application and whenever it appears to him that any such tax accruing under parts 1 through 8 has not been paid as required by law, shall issue such citation. The service of such citation and the time, manner, and proof thereof and the hearing and determination thereof shall conform as near as may be to the provisions of the laws governing probate practice of this state.

(3) Whenever it appears that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of parts 1 through 8 in such district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax; and the attorney general, in the name of the state, shall sue for and enforce the collection of such tax, and the county attorney of the county shall appear for and act on behalf of

any county treasurer who is cited to appear before any district court under the provisions of parts 1 through 8.

History: En. Sec. 16, Ch. 65, L. 1923; re-en. Sec. 10400.30, R.C.M. 1935; amd. Sec. 92, Ch. 391, L. 1973; R.C.M. 1947, 91-4440; amd. Sec. 26, Ch. 6, L. 1979.

72-16-444 reserved.

72-16-445. In-kind payment — intent. It is the intent of 72-16-445 through 72-16-450 to allow the payment of inheritance and estate taxes by the transfer to the state of unique objects of significant historical or artistic interest, extremely unique sites or buildings of historical interest, and easements and other recognized interests in land to conserve unique open space and to preserve wildlife habitat, park, recreational, historic, aesthetic, cultural, and natural values on or related to land, while limiting the impact of such transfers on the revenue collected under this chapter. It is the intent of 72-16-445 through 72-16-450 to allow in-kind payment for a short period of time to evaluate the impact of 72-16-445 through 72-16-450 on revenue, to evaluate the types of in-kind payments which are recommended by the department of revenue, and to evaluate the ability of receiving entities to manage the in-kind payments. It is not the intent of 72-16-445 through 72-16-450 to create a right in any donor to pay estate or inheritance taxes with an in-kind payment.

History: En. Sec. 1, Ch. 736, L. 1985.

72-16-446. In-kind payment — definitions. As used in 72-16-445 through 72-16-450, the following definitions apply:

(1) "Donor" means the personal representative, administrator, joint tenant, heir, legatee, devisee, trustee, tenant in common, conservator, person interested in the estate or trust, or any person responsible for the payment of inheritance or estate taxes to the state.

(2) "In-kind payment" means a payment of inheritance or estate taxes or a portion thereof by the transfer to the state of personal property, real property, or an interest in real property as defined in Title 70, chapters 15 and 17.

(3) "Interest in real property having recreational, conservation, or wildlife value" means any interest in real property recognized in Title 70, chapters 15 and 17, that, in the opinion of the receiving entity, is of unique value as a scenic, historic, archaeologic, scientific, or recreational resource to the state and which will contribute to the cultural, recreational, or economic life of the people and their health or is unique and critical habitat for wildlife in the state.

(4) "Object of significant artistic merit" means any object of art, a collection of records or minerals, or a painting, engraving, relic, coin, furniture, or fixture which in the opinion of the receiving entity is of unique and peculiar artistic value and of historical significance to Montana.

(5) "Receiving entity" means the Montana historical society or the department of fish, wildlife, and parks.

(6) "Site of significant historical interest" means any building, fixture, real property, or any combination thereof that in the opinion of the receiving entity is of unique and peculiar historical significance to Montana.

(7) "Value of in-kind payment" means the value of an object of significant artistic merit, a site of significant historical interest, or an interest in real property having recreational, conservation, or wildlife value reflecting its

intrinsic value to Montana and the public as determined by a certified appraiser selected by the receiving entity.

History: **En. Sec. 2, Ch. 736, L. 1985.**

72-16-447. Application for in-kind payment — in-kind review committee — review process. (1) Upon written application from a receiving entity, the department of revenue shall notify the revenue oversight committee that such an application has been received.

(2) Upon receipt of such notification, the revenue oversight committee shall appoint an in-kind review committee. The in-kind review committee must be comprised of the following persons, appointed by the revenue oversight committee:

(a) a representative of the receiving entity; and

(b) six members representing the county in which the property proposed for in-kind payment lies or was situated at the time of death of the person whom the donor represents, as follows:

(i) one member of the county commission;

(ii) one state senator;

(iii) one state representative; and

(iv) three residents from the community at large.

(3) The in-kind review committee is a voluntary review committee and is entitled to no compensation or reimbursement of expenses for its review, recommendation, or any other activity.

(4) The in-kind review committee will advise the department and the revenue oversight committee as to the following:

(a) proposed and potential uses of the property;

(b) where applicable, methods and potential sources for rehabilitation, maintenance, and general support of the property alternative to the statement submitted by the receiving entity pursuant to 72-16-448.

(5) Upon completion of its review, the in-kind review committee shall submit a report in written form to the revenue oversight committee and the department, which must be considered in determining whether to recommend that the legislature approve the in-kind payment.

(6) The in-kind review committee has 180 days from the date written application is received by the department from the receiving entity within which to make its report.

(7) The department shall, as provided in 72-16-438, defer payment of inheritance or estate tax that is under review for in-kind payment, so that the tax due is exempt from the interest penalty imposed under 72-16-441.

History: **En. Sec. 3, Ch. 736, L. 1985.**

72-16-448. Receipt of application for in-kind payment — limitations. (1) Upon receipt of the written application of a receiving entity and the report, if any, of the in-kind review committee, the department of revenue, after consultation with the revenue oversight committee, may recommend that the legislature approve acceptance by the department as in-kind payment of all or a portion of estate or inheritance taxes property consisting of any object of significant artistic merit, any site of significant historical interest, or any interest in real property having recreational, conservation, or wildlife value.

(2) A written application pursuant to subsection (1) must be accompanied by a statement from the receiving entity concerning the methods available for the maintenance, supervision, and care of the object, site, or interest in real property.

(3) The department may accept an in-kind payment if:

(a) the total estate and inheritance taxes due exceed $100,000;

(b) the value of the in-kind payment does not exceed $400,000; and

(c) it has received the approval of the legislature.

History: **En. Sec. 4, Ch. 736, L. 1985.**

72-16-449. Valuation of in-kind payment. The receiving entity shall certify the value of the in-kind payment to the department of revenue and provide such documentation or other evidence of the value of the in-kind payment as the department may require.

History: **En. Sec. 5, Ch. 736, L. 1985.**

72-16-450. Receipts of in-kind payments — recording. Title or possession of the in-kind payment must be taken in the name of the state of Montana by the receiving entity. The receiving entity shall promptly notify the department of revenue and the revenue oversight committee of the receipt of the in-kind payment and the proper recording of any interest in real property. Upon such notification, the department shall notify the county treasurer and state treasurer of the in-kind payment. The in-kind payment must be recorded and credited as if money had been received for payment of the inheritance or estate tax.

History: **En. Sec. 6, Ch. 736, L. 1985.**

72-16-451. Definitions for deferred payment purposes. As used in 72-16-451 through 72-16-465, the following definitions apply:

(1) "Adjusted gross estate" means the clear market value of the property passing by reason of a decedent's death determined under Title 72, chapter 16, without reduction for the federal estate tax due or paid. The sum must be determined on the basis of the facts and circumstances in existence on the date on which the tax imposed by Title 72, chapter 16, is determined, but in no event later than a date 18 months after the date of the death of the decedent.

(2) "Closely held business amount" means the value of the interest in a closely held business that qualifies under 72-16-452(1).

(3) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(4) "Value" means value determined for the purposes of the Montana inheritance tax.

History: **En. Sec. 13, Ch. 705, L. 1979.**

72-16-452. Deferred payment for transfer of closely held business interest. (1) If the value of an interest in a closely held business that is taxable under Title 72, chapter 16, part 3, as a transfer from a decedent who was at the time of death a resident of this state exceeds 35% of the adjusted gross estate, the personal representative may elect to pay all or part of the tax imposed by Title 72, chapter 16, part 3, in 2 or more but less than 11 equal installments.

(2) The maximum amount of tax that may be paid in installments by each beneficiary is an amount that bears the same ratio to the tax imposed by Title

72, chapter 16, part 3, as the closely held business amount passing to the beneficiary bears to the clear market value of all property passing to the beneficiary, without reduction for the federal estate tax due or paid.

(3) If an election is made under subsection (1), the first installment must be paid on or before a date selected by the personal representative that is not more than 5 years after the date prescribed by 72-16-441 for the payment of tax without interest. If, however, a credit is claimed on the federal estate tax return for state death taxes on the estate under the provisions of section 2011(a) of the Internal Revenue Code, as amended, an amount of inheritance tax due equal to the federal credit must be paid within the period established in section 2011(c) of the Internal Revenue Code, as amended. Each succeeding installment must be paid on or before the date that is 1 year after the date of the preceding installment. The department may for reasonable cause extend the time for payment of any installment under this section, including any part of an additional tax prorated to any installment, for a reasonable period but not beyond the date that is 12 months after the due date for the last installment.

(4) If an election is made under subsection (1), the tax due may not be further deferred under the provisions of 72-16-438.

History: En. Sec. 14, Ch. 705, L. 1979; amd. Sec. 12, Ch. 511, L. 1983.

72-16-453. Closely held business defined — qualification. (1) For the purposes of 72-16-323 and 72-16-452, the following definitions apply:

(a) "Closely held business" means:

(i) a trade or business carried on as a sole proprietorship;

(ii) a partnership carrying on a trade or business if the partnership had 15 or fewer partners; or

(iii) a corporation carrying on a trade or business if the corporation had 15 or fewer shareholders.

(b) "Interest in a closely held business" means:

(i) an interest as a sole proprietor in a trade or business carried on as a proprietorship;

(ii) an interest as a partner in a partnership carrying on a trade or business if:

(A) 20% or more of the total capital interest in the partnership would be taxable under Title 72, chapter 16, part 3, except for 72-16-323, as a transfer from the decedent; or

(B) the partnership had 15 or fewer partners;

(iii) stock in a corporation carrying on a trade or business if:

(A) 20% or more in value of the voting stock of the corporation would be taxable under Title 72, chapter 16, part 3, except for 72-16-323, as a transfer from the decedent; or

(B) the corporation had 15 or fewer shareholders.

(2) Determination for qualification under subsection (1)(b) must be made as of the time immediately before the decedent's death.

(3) Stock or a partnership interest held by a husband and wife as joint tenants or tenants in common is treated as owned by one shareholder or one partner, as the case may be.

(4) Property owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by

or for its shareholders, partners, or beneficiaries. For the purposes of this subsection, a person is a beneficiary of a trust only if the person has a present interest in the trust.

(5) All stock and all partnership interests held by the decedent or by any member of the decedent's family within the meaning of section 267(c)(4) of the Internal Revenue Code is treated as being owned by the decedent.

History: En. Sec. 15, Ch. 705, L. 1979; amd. Sec. 3, Ch. 288, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 288 at beginning of (1) inserted reference to 72-16-323; inserted (1)(a) defining closely held business; in (1)(b)(ii)(A) and (1)(b)(iii)(A) inserted "except for 72-16-323"; and made minor changes in style. Amendment effective April 18, 1997.

Effective Date — Retroactive Applicability: Section 6, Ch. 288, L. 1997, provided: "[This act] [72-16-101, 72-16-323, 72-16-453, and 72-16-455] is effective on passage and approval [approved April 18, 1997] and applies retroactively, within the meaning of 1-2-109, to estates of persons who die after December 31, 1996."

Cross-References

Business corporations, Title 35, ch. 1.
Partnerships in general, Title 35, ch. 10.
Joint interest defined, 70-1-307.

72-16-454. Farmhouses and other structures taken into account. For the purposes of the 35% requirement of 72-16-452, an interest in a closely held business that is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by the owner or lessee for purposes of operating or maintaining the farm.

History: En. Sec. 16, Ch. 705, L. 1979; amd. Sec. 135, Ch. 370, L. 1987.

72-16-455. Partnership interests and stock not readily tradable. (1) If the personal representative elects the benefits of this section, at the time and in the manner as the department may prescribe:

(a) for the purposes of 72-16-453(1)(b)(ii)(A) or (1)(b)(iii)(A), whichever is appropriate, and for the purposes of 72-16-456, any capital interest in a partnership and any nonreadily tradable stock, which after the application of 72-16-453(2) through (5) is treated as owned by the decedent, must be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent;

(b) the personal representative must be treated as having selected under 72-16-452(3) the date prescribed by 72-16-441 for the payment of the tax without interest; and

(c) section 72-16-461 does not apply.

(2) For the purposes of this section, "nonreadily tradable stock" means stock for which at the time of the decedent's death there was no market on the stock exchange or in an over-the-counter market.

History: En. Sec. 17, Ch. 705, L. 1979; amd. Sec. 4, Ch. 288, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 288 in (1)(a) substituted "72-16-453(1)(b)(ii)(A) or (1)(b)(iii)(A)" for "72-16-453(1)(b)(i) or (1)(c)(i)"; and made minor changes in style. Amendment effective April 18, 1997.

Effective Date — Retroactive Applicability: Section 6, Ch. 288, L. 1997, provided: "[This act] [72-16-101, 72-16-323, 72-16-453, and 72-16-455] is effective on passage and approval [approved April 18, 1997] and applies retroactively, within the meaning of 1-2-109, to estates of persons who die after December 31, 1996."

72-16-456. Interests in more than one closely held business. (1) Interests in two or more closely held businesses, with respect to which there is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent 20%

or more of the total value of each business, shall be treated as an interest in a single closely held business.

(2) For the purposes of the 20% requirement of subsection (1), an interest in a closely held business that represents the surviving spouse's interest in property held by the decedent and the surviving spouse as joint tenants or tenants in common shall be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent.

History: **En. Sec. 18, Ch. 705, L. 1979; amd. Sec. 13, Ch. 511, L. 1983.**

72-16-457. Election. An election under 72-16-452 must be made not later than 18 months after the death of the decedent and must be made in such manner as the department prescribes.

History: **En. Sec. 19, Ch. 705, L. 1979.**

72-16-458. Proration of any additional tax when election made. (1) If an election is made under 72-16-452 to pay any part of the tax imposed by Title 72, chapter 16, part 3, in installments and an additional tax is determined, the additional tax, subject to the limitation provided by 72-16-452(2), shall be prorated to the installments payable under 72-16-452.

(2) (a) The part of the additional tax so prorated to any installment, the date for payment of which has not arrived, shall be collected at the same time as and as part of the installment.

(b) The part of the additional tax so prorated to any installment already paid shall be paid on notice and demand from the department.

(3) This section does not apply if the additional tax is due to negligence, intentional disregard of rules, or fraud with intent to evade tax.

History: **En. Sec. 20, Ch. 705, L. 1979.**

72-16-459. Election of deferral as to additional tax. (1) If an additional tax is determined under Title 72, chapter 16, part 3, and the estate qualifies under 72-16-452 and the personal representative has not made an election under 72-16-452, the personal representative may elect to pay the additional tax in installments.

(2) An election under this section must be made not later than 60 days after notice and demand for payment of the additional tax has been given by the department and must be made in the manner prescribed by the department.

(3) If an election is made under this section, the additional tax shall, subject to the limitation in 72-16-452(2), be prorated to the installments that would have been due if an election had been timely made under 72-16-452. The part of the additional tax so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this section. The portion of the additional tax prorated to installments, the date for payment of which would not have so arrived, shall be paid at the time such installments would have been due if such an election had been made.

History: **En. Sec. 24, Ch. 705, L. 1979.**

72-16-460. Security. If the time for payment of any amount of tax has been extended under 72-16-459, the department may require the taxpayer to furnish a bond in an amount not exceeding double the amount with respect to which the extension is granted conditioned upon the payment of the amount extended in accordance with the terms of the extension.

History: En. Sec. 25, Ch. 705, L. 1979.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-16-461. Interest required when payment deferred — rate. (1) If the time for payment of an amount of tax imposed by Title 72, chapter 16, part 3, is extended as provided in 72-16-452 interest on the 4% portion of such amount shall, in lieu of the annual rate provided by 72-16-441, be paid at the rate of 4%. For the purposes of this section, the amount of any additional tax that is prorated to installments payable under 72-16-459 shall be treated as an amount of tax payable in installments under that section.

(2) For the purposes of this section, "4% portion" means the lesser of:

(a) $345,800; or

(b) the amount of the tax imposed by Title 72, chapter 16, part 3, which is extended as provided in 72-16-452.

(3) If the amount of tax imposed by Title 72, chapter 16, part 3, that is extended exceeds the 4% portion, any payment of a portion of such amount shall, for the purpose of computing interest for periods after such payment, be treated as reducing the 4% portion by an amount that bears the same ratio to the amount of such payment as the amount of the 4% portion, determined without regard to this section, bears to the amount of tax that is extended as provided in 72-16-452.

History: En. Sec. 27, Ch. 705, L. 1979.

72-16-462. Interest — when payable. (1) If the time for payment of any amount of tax has been extended under 72-16-451 through 72-16-465, interest payable under 72-16-461 on any unpaid portion of such amount:

(a) attributable to the first 5 years after the date prescribed by 72-16-441 for the payment of the tax without interest shall be paid annually;

(b) attributable to any period after the 5-year period referred to in (1)(a) of this section shall be paid annually at the same time as and as part of each installment payment of the tax.

(2) In the case of an additional tax to which 72-16-458 applies that is determined after the close of the 5-year period referred to in subsection (1)(a) of this section, interest attributable to such 5-year period and interest assigned to any installment the date for which has arrived on or before the date of the assessment of the additional tax must be paid on notice and demand from the department.

(3) If the personal representative has selected a period shorter than 5 years, the shorter period shall be substituted for 5 years in subsections (1) and (2).

History: En. Sec. 21, Ch. 705, L. 1979.

72-16-463. Failure to pay installment — acceleration of payment. (1) Except as provided in subsection (2), if any installment of principal or interest under 72-16-451 through 72-16-465 is not paid on or before the date fixed for its payment, including any extension of time for the payment of the installment, the unpaid portion of the tax payable in installments must be paid on notice and demand from the department.

(2) If any installment of principal or interest under 72-16-451 through 72-16-465 is not paid on or before the date determined under subsection (1) but

is paid within 6 months of the date, the provisions of subsection (1) do not apply with respect to such payment, the provisions of 72-16-461 may not apply with respect to the determination of interest on such payment, and there is imposed a penalty in an amount equal to the product of 5% of the amount of such payment multiplied by the number of months or fractions thereof after such date and before payment is made.

History: En. Sec. 23, Ch. 705, L. 1979; amd. Sec. 14, Ch. 511, L. 1983.

72-16-464. Acceleration of payment — other grounds. (1) The extension of time for payment of tax provided in 72-16-452 shall cease to apply and any unpaid portion of the tax payable must be paid upon notice and demand of the department if any portion of an interest in a closely held business that qualifies under 72-16-452 is distributed, sold, exchanged, or otherwise disposed of or if money and other property attributable to such an interest is withdrawn from the trade or business and the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50% of the value of such interest.

(2) In the case of a distribution in redemption of stock to which section 303 of the Internal Revenue Code or so much of section 304 of the Internal Revenue Code as relates to section 303 applies:

(a) subsection (1) of this section does not apply with respect to the stock redeemed and, for the purposes of subsection (1), the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed; and

(b) subsection (1) of this section does not apply with respect to withdrawals of money and other property distributed and, for the purposes of subsection (1), the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed.

(3) Subsection (1) of this section does not apply to an exchange of stock pursuant to a plan of reorganization described in section 368(a)(1)(D), (a)(1)(E), or (a)(1)(F) of the Internal Revenue Code or to an exchange to which section 355 of the Internal Revenue Code or so much of section 356 of the Internal Revenue Code applies to section 355, but any stock received in such an exchange shall be treated for purposes of subsection (1) as an interest qualifying under 72-16-452.

(4) Subsection (1) of this section does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, intestate succession, or a trust created by the decedent; nor does it apply to a series of subsequent transfers of the property by reason of death of the transferor, so long as each transfer is to a member of the family within the meaning of section 267(c)(4) of the Internal Revenue Code.

History: En. Sec. 22, Ch. 705, L. 1979; amd. Sec. 15, Ch. 511, L. 1983.

72-16-465. Effect of payment deferral on statute of limitations. The running of the period of limitations for collection of any tax imposed by Title 72, chapter 16, part 3, is suspended for the period of any extension of time for payment granted under 72-16-452.

History: En. Sec. 26, Ch. 705, L. 1979.

72-16-466 through 72-16-470 reserved.

72-16-471. Definitions for lien on deferred tax purposes. As used in 72-16-471 through 72-16-482, the following definitions apply:

(1) "Deferral period" means the period for which the payment of tax is deferred under 72-16-452.

(2) "Deferred amount" means the aggregate amount deferred under 72-16-452 determined as of the date prescribed by 72-16-441 for payment without interest of the tax imposed by Title 72, chapter 16, part 3.

(3) "Lien property" means interests in real and other property to the extent such interests can be expected to survive the deferral period and are designated in the agreement referred to in 72-16-474.

(4) "Required interest amount" means the aggregate amount of interest that will be payable over the first 4 years of the deferral period with respect to the deferred amount determined as of the date prescribed for payment without interest of the tax imposed by Title 72, chapter 16, part 3.

History: En. Sec. 28, Ch. 705, L. 1979.

72-16-472. Lien for tax deferred. In the case of any estate with respect to which an election has been made under 72-16-452, if the personal representative makes an election under this section at such time and in such manner as the department may prescribe and files the agreement referred to in 72-16-474 the deferred amount, plus any interest or additional amount, shall be a lien in favor of the state on the lien property.

History: En. Sec. 29, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-473. Application of definitions to additional tax. In the case of an additional tax, a separate deferral period, deferred amount, and required interest amount shall be determined as of the due date of the first installment after the additional tax is prorated to installments under 72-16-452.

History: En. Sec. 39, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-474. Agreement consenting to lien. The agreement is a written agreement signed by each person in being who has an interest, whether or not in possession, in any property designated in the agreement:

(1) consenting to the creation of the lien under 72-16-472 with respect to the property; and

(2) designating a responsible person to be agent for the beneficiaries of the estate and for persons who have consented to the creation of the lien in dealings with the department on matters arising under 72-16-452 or 72-16-472.

History: En. Sec. 32, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-475. Maximum value of required lien property. (1) The maximum value of the property that the department may require as lien property with respect to any estate is a value that is not greater than the sum of the deferred amount and the required interest amount.

(2) For the purposes of subsection (1), the value of any property is determined as of the date prescribed by 72-16-441 for payment of the tax without interest and is determined by taking into account any encumbrances.

History: En. Sec. 30, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-476. Partial substitution of bond for lien. If the value required as lien property exceeds the value of the interests in property covered by the agreement referred to in 72-16-474, the department may accept a bond in an amount equal to such excess conditioned on the payment of the amount extended in accordance with the terms of the extension.

History: En. Sec. 31, Ch. 705, L. 1979.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-477. Filing of lien. The lien imposed by 72-16-472 is not valid against a purchaser, holder of a security interest, construction lien, or judgment lien creditor until a warrant for distraint has been filed by the department pursuant to 72-16-432.

History: En. Sec. 33, Ch. 705, L. 1979; amd. Sec. 3, Ch. 131, L. 1989.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-478. Period of lien. The lien imposed by 72-16-472 arises at the time a warrant for distraint is filed under 72-16-432 and continues until liability for the deferred amount is satisfied or becomes unenforceable by reason of lapse of time.

History: En. Sec. 34, Ch. 705, L. 1979; amd. Sec. 4, Ch. 131, L. 1989.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-479. Priorities. (1) A lien filed under 72-16-472 is not valid:

(a) as against real property tax and special assessment liens;

(b) in the case of real property subject to a lien for repair or improvement, as against a construction lienor; or

(c) as against a security interest set forth in section 6323(c)(3) of the Internal Revenue Code (26 U.S.C. 6323(c)(3)), whether the security interest came into effect before or after the tax lien filing.

(2) Subsections (1)(b) and (1)(c) of this section do not apply to any security interest that came into existence after the date on which the department filed notice that payment of the deferred amount has been accelerated under 72-16-464.

History: En. Sec. 35, Ch. 705, L. 1979; amd. Sec. 261, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1)(c) substituted "section 6323(c)(3) of the Internal Revenue Code (26 U.S.C. 6323(c)(3))" for "paragraph 3 of section 6323(c) of the Internal

Revenue Code". Amendment effective March 12, 1997.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-480. Lien in lieu of other tax liens. If there is a lien on property under 72-16-472, the lien under 72-16-432 does not apply to the property with respect to the same estate.

History: En. Sec. 36, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-481. Lien in lieu of bond. The department may not require the furnishing of any bond for the payment of tax to which an agreement that meets the requirements of 72-16-474 applies.

History: En. Sec. 38, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-482. Additional lien property. (1) If at any time the value of the property covered by the agreement is less than the unpaid portion of the deferred amount and the required interest amount, the department may require the addition of property to the agreement. The department may not require that the value of the property covered by the agreement exceed the unpaid portion.

(2) If property having the required value is not added to the property covered by the agreement or if other security equal to the required value is not furnished within 90 days after notice and demand by the department, the failure to comply shall be treated as an act accelerating payment of the installments under 72-16-464.

History: En. Sec. 37, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-483 through 72-16-490 reserved.

72-16-491. Lien for additional tax attributable to farm and closely held business property. (1) In the case of any interest in qualified real property within the meaning of 72-16-331(16), an amount equal to the adjusted tax difference attributable to such interest within the meaning of 72-16-338(3) is a lien in favor of the state on the property in which such interest exists.

(2) The lien imposed by this section shall arise at the time an election is filed under 72-16-333 and continues with respect to any interest in the qualified real property until:

(a) the liability for tax under 72-16-338 with respect to such interest has been satisfied or has become unenforceable by reason of lapse of time; or

(b) until it is established to the satisfaction of the department that no further tax liability may arise under 72-16-338 with respect to such interest.

(3) Sections 72-16-477, 72-16-479, and 72-16-480 apply with respect to a lien imposed by this section.

History: En. Sec. 40, Ch. 705, L. 1979; amd. Sec. 24, Ch. 511, L. 1983.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-492. Substitution of security for lien. The department may provide by rule for the substitution of security for the lien imposed by 72-16-491.

History: En. Sec. 41, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

72-16-493. Subordination of liens. The department may consent to the subordination of a lien imposed by 72-16-472 or 72-16-491 upon any part of the property subject to the lien if the state will be adequately secured after the subordination.

History: En. Sec. 42, Ch. 705, L. 1979.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

Federal tax liens, Title 71, ch. 3, part 2.

Part 5

Joint Tenancies and Life Estates Determination of Tax — Termination

72-16-501. Interest of decedent terminated upon death. The interest of the decedent in property held in joint tenancy terminates upon his death.

History: En. 91-4471 by Sec. 2, Ch. 409, L. 1977; R.C.M. 1947, 91-4471(2).

Cross-References

Joint interest defined, 70-1-307.

72-16-502. Determination and payment of tax when no personal representative — procedure — exception. (1) For the purposes of this section, a decedent is one who dies leaving no property that requires the appointment of a personal representative and who:

(a) was the owner of a life estate that terminated at death;

(b) was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax because of death.

(2) Except as provided in subsection (6), a remainderman, surviving joint tenant, or other interested party shall, upon the death of a decedent, file with the department of revenue:

(a) a copy of the death certificate;

(b) a verified application, in a form prescribed by the department, containing information that the department considers necessary; and

(c) evidence of the instruments that created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.

(3) Upon receipt of the application, the department shall:

(a) stamp the filing date upon the application;

(b) issue a certificate showing the inheritance tax due, if any;

(c) affix the certificate to a certified copy of the application and return the certificate and copy to the applicant or the applicant's attorney; and

(d) affix a copy of the certificate to the original application and keep it on file with the department.

(4) The applicant shall pay the inheritance tax determined to the county treasurer for transmittal to the state treasurer. The county treasurer shall issue a receipt for the payment of the tax.

(5) If disputes arise as to tax computation, they must be resolved as provided under the laws applicable to the determination of inheritance taxes in estates.

(6) A surviving joint tenant who is the surviving spouse of a decedent whose aggregate value of the interest in the joint property is less than the federal estate tax filing requirement is not required to file under subsection (2).

History: En. 91-4470 by Sec. 1, Ch. 409, L. 1977; R.C.M. 1947, 91-4470; amd. Sec. 1, Ch. 391, L. 1995.

72-16-503. Additional filings required when real property involved and no representative — release of lien. (1) If an interest in real property is involved under 72-16-502, the applicant shall record with the clerk and recorder of each county in which the real property or any part of the property is located a document containing those matters required by 7-4-2613(3). A surviving joint tenant who is the surviving spouse is not subject to the recording requirements under 7-4-2613(3).

(2) The surviving joint tenant who is the surviving spouse with an interest in real property under 72-16-502 shall record with the clerk and recorder of each county in which the real property is located an acknowledged statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated. The acknowledged statement must include a legal description of the real property.

(3) The recording of the documents under subsection (1) or (2) constitutes release of any lien for inheritance taxes.

History: En. 91-4471 by Sec. 2, Ch. 409, L. 1977; R.C.M. 1947, 91-4471(1), (3); amd. Sec. 2, Ch. 377, L. 1981; amd. Sec. 2, Ch. 391, L. 1995.

72-16-504. Determination and payment of tax when personal representative appointed — procedure. If a decedent dies leaving property which requires the appointment of a personal representative and was also an owner of property as described in 72-16-502(1), the remainderman, surviving joint tenant, personal representative, or other interested party may have the inheritance tax determined and the joint tenancy terminated or ownership transferred as provided in 72-16-501 through 72-16-503 by filing with the department:

(1) the information listed in 72-16-502(2); and

(2) the name of the county of administration or probate and the court file number.

History: En. 91-4472 by Sec. 3, Ch. 409, L. 1977; R.C.M. 1947, 91-4472.

72-16-505. Attorney not required for transfer of title — maximum attorney's fee. (1) If a decedent as defined in 72-16-502 leaves a surviving spouse, the surviving spouse is not required to hire an attorney to transfer title to the property involved.

(2) If an attorney is hired by the surviving spouse, the attorney's fee for services required in terminating a joint tenancy or transferring other types of ownership listed in 72-16-502 may not exceed 2% of the value of the interest passing to the spouse.

History: En. 91-4473 by Sec. 4, Ch. 409, L. 1977; R.C.M. 1947, 91-4473.

Part 6

Apportionment of Taxes

72-16-601. Definitions. For purposes of this part, the following definitions apply:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state.

(2) "Fiduciary" means personal representative or trustee.

(3) "Person" means any individual, partnership, association, joint-stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

(4) "Person interested in the estate" means any person entitled to receive or who has received from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) "Tax" means the federal estate tax and any additional inheritance, estate, or death taxes imposed by the laws of any state and interest and penalties imposed in addition to the tax.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(1).

72-16-602. Authority of court of administration to determine apportionment. The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose, may determine the apportionment of the tax.

History: En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(a).

72-16-603. Tax — how apportioned. (1) Except as provided in subsection (3) and unless the will or governing instrument otherwise provides, the tax must be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose.

(2) If the decedent's will or governing instrument directs a method of apportionment of tax different from the method described in this part, the method described in the will or governing instrument controls.

(3) If the liabilities of persons interested in the estate as described in this part differ from those that result under the federal estate tax law, the liabilities imposed by the federal law control and the balance of this part applies as if the resulting liabilities had been prescribed in this part.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(2); amd. Sec. 16, Ch. 511, L. 1983; amd. Sec. 6, Ch. 279, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 279 in exception clause in (1) and in two places in (2), after "will", inserted "or governing instrument"; and made minor changes in style.

72-16-604. Equitable power of court to vary manner of apportionment. If the court finds that it is inequitable to apportion interest and penalties in the manner provided in 72-16-603 because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(b).**

72-16-605. Distribution prior to apportionment — bond required. If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(4)(b).**

72-16-606. No apportionment as between temporary interest and remainder. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(6).**

72-16-607. Allowance for exemptions, deductions, and credits. (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift, but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in 72-16-603 and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal

Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(5).**

72-16-608. Powers of personal representative in relation to satisfaction of tax liability. (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest.

(2) If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate.

(3) If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(4)(a).**

72-16-609. Penalties and interest charged to fiduciary when caused by his negligence. If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(c).**

Cross-References

Liability for negligence, 27-1-701.

72-16-610. Action to recover apportioned tax — limitations on duty to initiate — uncollectibility. Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3-month period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(7).**

72-16-611. Action to recover apportioned tax — determination of court prima facie correct. In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part, the determination of the court in respect thereto made pursuant to 72-16-602 shall be prima facie correct.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(3)(d).**

72-16-612. Action by foreign representative to recover apportioned tax. A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action, the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

History: **En. 91A-3-916 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-916(8).**

Part 7

Estates With Multistate Aspects — Securities Transfer

72-16-701. Transfer of in-state securities by foreign representative — payment of tax. If a foreign executor, administrator, or trustee shall assign or transfer any stocks, bonds, mortgages, or other securities, in this state or within the jurisdiction of this state standing in the name of a decedent or in trust for a decedent liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

History: **En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(1).**

72-16-702. Duties of holder of securities or assets of nonresident decedent — prerequisites to transfer — exception. (1) No safe deposit company, bank, or other institution or person or persons holding securities or assets of a nonresident decedent or any corporation organized under the laws of this state in which a nonresident decedent held stock, bonds, mortgages, or other securities at his decease shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent or upon their order or request unless notice of the time and place of such intended transfer be served upon the department of revenue at least 10 days prior to the transfer; nor shall any such safe deposit company, bank, or other institution or person or persons or any corporation deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the department, personally or by representative, to examine said securities or assets at any time before such delivery or transfer.

(2) Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided shall render said safe deposit company, trust company, bank, or other institution or person

or persons or such corporation liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws.

(3) The department may issue a certificate authorizing the transfer of any such stock, securities, or assets whenever it appears to the satisfaction of the department that no tax is due thereon.

(4) The foregoing provisions shall not apply to shares of stock in any Montana corporation held by a nonresident of Montana at the time of his death whose death occurred on or after January 30, 1945 and who was at the time of his death domiciled in any other district or state of the United States, provided reciprocal rights are granted by such district or state of domicile similar to 72-16-801, and in such event this section shall not apply to the transfer of stocks, bonds, mortgages, or other securities exempt from taxation under the provisions of 72-16-801, and a Montana corporation or its agent may transfer stocks, bonds, mortgages, and other securities without any liability for the tax imposed under the provisions of the inheritance tax laws where there are reciprocal rights as set forth in 72-16-801, and in such event no application for consent to transfer such stock need be made to the department, and the corporation or its duly authorized transfer agent may transfer such shares of stock upon its books without any such application or consent to transfer.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(2).

72-16-703. Holder of securities in Montana corporation not to transfer without retaining portion for tax. No holding company or other corporation subject to the provisions of this part shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of parts 1 through 8 on account of such transfer, except upon order of the proper court or a certificate of consent of the department of revenue.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(part).

72-16-704. Apportionment of deductions when property partly within and partly without the state. Whenever a tax is due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon the transfer of any property when the property or the estate left by such decedent is partly within and partly without this state or upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, any beneficiary of such estate is entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state. As to his Montana exemption, each beneficiary is entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(3); amd. Sec. 27, Ch. 6, L. 1979.

72-16-705. Department to secure information — rulemaking. The department of revenue shall require such reports and information and shall make such orders and rules as it may deem necessary to enable the department to secure the necessary information from domestic corporations and to ascertain the amount of and collect such tax.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(part).

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

72-16-706. Penalty. Any corporation or holding company violating the provisions of this part shall be liable to the state for the amount of the tax together with a penalty of 10% thereof.

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; re-en. Sec. 10400.11, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1953; amd. Sec. 80, Ch. 391, L. 1973; R.C.M. 1947, 91-4421(5).

Part 8

Nonresident Decedents

72-16-801. Exemption of intangible personal property of nonresident decedent — when. The tax imposed by parts 3, 7, and 9 and this part in respect of personal property, except tangible personal property having an actual situs in this state, is not payable if:

(1) the decedent is a resident of a state or territory of the United States which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal property having an actual situs in that state or territory; or

(2) the laws of the state or territory of residence of the nonresident decedent at the time of the transfer contained a reciprocal provision under which nonresidents of that state were exempted from transfer taxes or death taxes of every character in respect of personal property, except tangible personal property having an actual situs in that state, provided the state or territory of residence of such nonresident decedent allowed a similar exemption to residents of this state.

History: En. Sec. 1, Ch. 3, L. 1945; R.C.M. 1947, 91-4413; amd. Sec. 28, Ch. 6, L. 1979.

72-16-802. Nonresident decedent — application to department for determination of tax — affidavit. (1) Any personal representative, trustee, heir, devisee, or legatee of a nonresident decedent leaving no estate requiring administration in this state desiring to transfer any stocks, bonds, mortgages, or other securities or other personal property in this state or within the jurisdiction of this state may make application to the department of revenue for the determination whether there is any tax due upon account of the transfer thereof and the amount of any such tax.

(2) Such applicant shall furnish to the department an affidavit:

(a) setting forth a description and statement of the property owned by the decedent situated within this state or within its jurisdiction at the time of his death and the true value of said property at the time of decedent's death;

(b) setting forth a description and statement of the true value of all property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction; and

(c) containing a schedule or statement of all valid claims against the estate of the decedent, including the expenses of his last illness, funeral expenses, and expenses of administering his estate.

(3) Such applicant shall also, at the same time, furnish the department with:

(a) a certified copy of the last will of the decedent, in case he died testate or an affidavit setting forth the names, ages, and residence of the heirs at law of decedent in case he died intestate;

(b) the proportion of the entire estate of said decedent inherited by each of said persons; and

(c) the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made.

(4) Such affidavit shall be subscribed and sworn to by the personal representative of the decedent or some other person having knowledge of the facts therein set forth.

(5) The statement contained in any affidavits, statements, or schedules as to values or otherwise shall not be binding upon the department in case it believes the same to be erroneous or untrue.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(part).

72-16-803. Department to determine tax. From the information so furnished it and such other information as it may be able to obtain with reference thereto, the department of revenue shall with reasonable diligence proceed to ascertain and determine the amount of tax, if any, due under the provisions of parts 1 through 8 and notify the person making the application of the amount of the tax so ascertained and determined to be due; or, in case there is no tax to be paid, the department shall issue a consent to the transfer of the property so owned by the decedent.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(part).

72-16-804. Appeal from determination of department. Any person aggrieved by the determination of the department of revenue in any matter provided for in 72-16-802 or 72-16-803 may, within 30 days thereafter, appeal to the district court of Lewis and Clark County by serving on the department a notice in writing setting forth his objections to such determination and by filing such notice, after so serving the same, in the office of the clerk of such court, and thereupon and within 10 days after the service of such notice on it the department shall transmit full and complete copies of all original papers and records which have been filed with it in relation to such application to the clerk of said district court, and thereupon the district court shall have jurisdiction of such application and proceeding. Upon 10 days' notice given by either applicant or the department, the matter may be brought on for hearing and determination by said court, either in term time or in vacation, at a general or special term of court or at chambers, as may be directed by the order of the court.

History: **En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.15, R.C.M. 1935; amd. Sec. 82, Ch. 391, L. 1973; R.C.M. 1947, 91-4425(3).**

72-16-805. Procedure of department when application not made. (1) Whenever any nonresident decedent leaving no estate requiring administration in this state shall leave any stocks, bonds, mortgages, or other securities or other personal property within the state or within the jurisdiction thereof and no personal representative, trustee, heir, devisee, or legatee of such nonresident decedent has made application to the department of revenue for the determination as to whether there is any tax due for the transfer thereof and the amount of such tax, if any, the department, upon such matter being called to its attention, shall make an order and cause a copy thereof to be served upon the personal representative, trustee, heirs, devisees, or legatees of such nonresident decedent ordering and directing that a statement and return, under oath, containing the statements and information prescribed in 72-16-802 be filed with such department within 60 days from the date of such order or within such further time as the department may grant therefor.

(2) If such statement is not filed with the department within such time, the department may then procure such information in any manner it may deem advisable.

(3) Upon the filing of such statement or the procuring of such information by the department in the event of a failure to file the same in compliance with such order, the department shall proceed in the same manner as prescribed by 72-16-803 and all provisions of 72-16-804 with reference to hearings and appeals shall be applicable thereto.

History: **En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; re-en. Sec. 10400.16, R.C.M. 1935; amd. Sec. 83, Ch. 391, L. 1973; R.C.M. 1947, 91-4426.**

Part 9

Estate Tax

72-16-901. Purpose — liberal construction to effect. It is hereby declared to be the intent and purpose of this part to obtain for this state the benefit of the credit allowed under the provisions of the Internal Revenue Code, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes, and the same shall be liberally construed to effect this purpose.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(g).**

72-16-902. Applicability of other tax provisions. The provisions of parts 1 through 8 relating to the tax on inheritances and transfers shall apply to the taxes imposed by this part, insofar as the same are applicable and not in conflict with the provisions hereof.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(h).**

72-16-903. Taxable situs of property. For the purpose of this tax, the taxable situs of property shall be the same as the taxable situs for inheritance tax purposes.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).**

72-16-904. Estate tax imposed. In addition to the inheritance taxes hereinabove imposed, an estate tax is hereby imposed upon the transfer of the estate of every decedent leaving an estate which is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and which has, in whole or in part, a taxable situs in this state.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).**

72-16-905. Estate tax — how computed. The tax hereby imposed upon the transfer of each such estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state, less the inheritance taxes, if any, due this state, it being the purpose and intent of this part to impose only such additional taxes hereunder as may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).**

72-16-906. Required filings. The personal representative of the estate of any decedent whose estate is subject to the payment of a United States estate tax shall file a duplicate of the United States estate tax return with the department of revenue. He shall also file with the department a certificate or other evidence from the internal revenue service showing the amount of the United States estate tax as computed by the internal revenue service.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part); amd. Sec. 29, Ch. 6, L. 1979; amd. Sec. 28, Ch. 582, L. 1989.**

72-16-907. Department to determine tax — rehearing and appeal. (1) The department of revenue shall enter an order determining such state estate tax and the amount thereof so due and payable.

(2) Any person in interest aggrieved by such determination shall have the same right to apply for district court determination and of rehearing and appeal as is now provided for in the determination of inheritance taxes.

History: **En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).**

72-16-908. Persons liable for tax. Administrators, executors, trustees, and grantees under a conveyance made during the grantor's life and taxable hereunder shall be liable for such taxes with interest until the same have been paid.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(c).

72-16-909. When and where tax payable — interest. The estate tax shall be payable to the county treasurer of the county in which such estate is being probated in the same manner provided for the payment of inheritance taxes in 72-16-441.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(b); amd. Sec. 1, Ch. 166, L. 1979.

72-16-910. Extension of time for payment. The district court of the county in which such estate is being probated may, for cause shown, extend the time of payment of said tax whenever the circumstances of the case require.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(e).

72-16-911. Tax lien. Said taxes and interest shall be and remain a lien on the property for a period of 10 years from the date of death, unless sooner paid.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(d).

Cross-References

Federal tax liens, Title 71, ch. 3, part 2.

72-16-912. Collection and deposit of tax. The tax imposed herein shall be collected by the several county treasurers or the department of revenue for deposit with the state treasurer.

History: En. Sec. 2, Ch. 48, Ex. L. 1933; re-en. Sec. 10400.3a, R.C.M. 1935; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971; amd. Sec. 12, Ch. 365, L. 1974; R.C.M. 1947, 91-4411(part).

Part 10

Generation-Skipping Transfer Tax

72-16-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Direct skip" has the meaning given in section 2612(c), Internal Revenue Code.

(3) "Federal generation-skipping transfer tax" means the tax imposed by section 2601, Internal Revenue Code.

(4) "Generation-skipping transfer" means the generation-skipping transfer defined in section 2611, Internal Revenue Code, when the original transferor is a resident of Montana on the date of the original transfer or when the property is real or personal property located in Montana.

(5) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(6) "Original transferor" means any grantor, donor, trustor, or testator who by grant, gift, trust, or will makes a transfer of real or personal property that results in a federal generation-skipping transfer tax.

History: **En. Sec. 1, Ch. 273, L. 1991.**

72-16-1002. Imposition of tax. (1) A tax is imposed on each generation-skipping transfer, other than a direct skip, occurring at the same time and as a result of the death of an individual, in an amount equal to the maximum federal credit allowable under section 2604, Internal Revenue Code.

(2) If any of the property transferred is real property in another state or personal property located in another state that requires the payment of a tax for which credit is received against the federal generation-skipping transfer tax, the tax due under subsection (1) must be reduced by an amount that bears the same ratio to the total state tax credit allowable for federal generation-skipping transfer tax purposes as the value of the property taxable in the other state bears to the value of the gross generation-skipping transfer for federal generation-skipping transfer tax purposes.

History: **En. Sec. 2, Ch. 273, L. 1991.**

72-16-1003. Returns — payment. (1) A person required to file a return reporting a generation-skipping transfer under federal law shall file a duplicate of the federal return with the department and shall file any other information as the department may require. The return must be filed on or before the last day allowed for filing the federal return. A copy of amended or supplemental federal returns must be submitted to the department at the time it is filed with the internal revenue service.

(2) The tax imposed by 72-16-1002 must be paid on or before the deadline for filing the return. The tax must be paid to the department and deposited in the general fund.

History: **En. Sec. 3, Ch. 273, L. 1991.**

72-16-1004. Liability for tax — interest on delinquent tax. The person liable for payment of the federal generation-skipping transfer tax is liable for the tax imposed under 72-16-1002. If the tax imposed by 72-16-1002 is not paid within the time established in 72-16-1003, the tax is delinquent and draws interest at the rate of 10% a year.

History: **En. Sec. 4, Ch. 273, L. 1991.**

72-16-1005. Tax lien. The tax imposed by 72-16-1002 is a lien on the property subject to the tax for a period of 10 years from the time of the generation-skipping transfer. The payment of the tax and any interest due releases the lien and discharges the liability for payment of the tax. If the lien is not perfected by recording, a transfer for value to a bona fide purchaser divests the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgages, purchasers, or judgment creditors. The department may release the lien prior to the payment of the tax if adequate security for payment of the tax is given to the department.

History: **En. Sec. 5, Ch. 273, L. 1991.**

Cross-References

Federal tax liens, Title 71, ch. 3, part 2.

72-16-1006. Duty to claim maximum credit. A person liable for payment of the tax imposed under 72-16-1002 shall claim the maximum federal credit allowable for the portion of the state generation-skipping transfer tax paid with respect to property included in a taxable generation-skipping transfer. A person claiming less than the maximum federal credit allowable is liable for the full amount of the tax imposed under 72-16-1002.

History: En. Sec. 6, Ch. 273, L. 1991.

72-16-1007. Applicability of other taxes — rulemaking. The provisions of Title 72, chapter 16, parts 1 through 8, relating to the tax on inheritances and transfers, apply to 72-16-1001 through 72-16-1006 unless they are in conflict with this part. The department shall adopt rules necessary for the administration and enforcement of this part.

History: En. Sec. 7, Ch. 273, L. 1991.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

CHAPTER 17

ANATOMICAL GIFT ACT

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72-17-312. Approval of eye banks.

Chapter Cross-References

Organ procurement program required, 50-5-212.

HIV antibody testing — testing of donors of organs, tissues, and semen required — penalty, 50-16-1008.

Indication on driver's license of intent to make anatomical gift, 61-5-301.

Part 1
General Provisions

72-17-101. Short title. This chapter may be cited as the "Uniform Anatomical Gift Act".

History: En. Sec. 9, Ch. 340, L. 1969; R.C.M. 1947, 69-2323.

72-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of the individual's body.

(6) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(7) "Hospital" means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(8) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(9) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(10) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(11) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(12) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part.

History: En. Sec. 1, Ch. 340, L. 1969; R.C.M. 1947, 69-2315; amd. Sec. 1, Ch. 403, L. 1983; amd. Sec. 3, Ch. 540, L. 1989; amd. Sec. 176, Ch. 418, L. 1995; amd. Sec. 522, Ch. 546, L. 1995.

Cross-References

Ophthalmologist and physician licensure, Title 37, ch. 3.

72-17-103. Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 8, Ch. 340, L. 1969; R.C.M. 1947, 69-2322.

72-17-104. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 7, Ch. 340, L. 1969; R.C.M. 1947, 69-2321(c).

72-17-105 through 72-17-107 reserved.

72-17-108. Coordination of procurement and use. Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

History: En. Sec. 14, Ch. 540, L. 1989.

Cross-References

Organ procurement program required, 50-5-212.

Part 2

Execution and Operation of Anatomical Gift

72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by an individual. (1) An individual who is at least 18 years of age may:

(a) make an anatomical gift for any of the purposes stated in 72-17-202;

(b) limit an anatomical gift to one or more of those purposes; or

(c) refuse to make an anatomical gift.

(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the testator's death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift not made by will only by:

(a) a signed statement;

(b) an oral statement made in the presence of two individuals;

(c) any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

(d) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6).

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(9) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's motor vehicle operator's license; or

(iii) any other writing used to identify the individual as refusing to make an anatomical gift.

(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under 72-17-214 or on a removal or release of other parts under 72-17-215.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9).

History: En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(a) thru (c); amd. Sec. 4, Ch. 540, L. 1989.

Cross-References

Indication on driver's license of intent to make anatomical gift, 61-5-301.

72-17-202. Persons who may become donees — purposes for which anatomical gifts may be made. (1) The following persons may become donees of anatomical gifts for the purposes stated:

(a) a hospital, surgeon, physician, or procurement organization for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

(b) an accredited medical or dental school, college, or university for education, research, advancement of medical or dental science; or

(c) a designated individual for therapy or transplantation needed by that individual.

(2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by a hospital.

(3) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under 72-17-214, the donee may not accept the anatomical gift.

History: En. Sec. 3, Ch. 340, L. 1969; R.C.M. 1947, 69-2317; amd. Sec. 2, Ch. 403, L. 1983; amd. Sec. 5, Ch. 540, L. 1989.

72-17-203 through 72-17-206. Repealed. Sec. 19, Ch. 540, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

72-17-203. En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(e).

72-17-204. En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(a), (b), (e); amd. Sec. 1, Ch. 459, L. 1985; amd. Sec. 38, Ch. 443, L. 1987.

72-17-205. En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(c).

72-17-206. En. Sec. 4, Ch. 340, L. 1969; R.C.M. 1947, 69-2318(d); amd. Sec. 136, Ch. 370, L. 1987.

72-17-207. Examination — autopsy — liability. (1) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(2) The provisions of this chapter are subject to the laws of this state governing autopsies.

(3) A hospital, physician, surgeon, coroner, enucleator, technician, nurse, or other person who acts in accordance with this chapter or with the applicable anatomical gift act of another state or attempts in good faith to do so is not liable for that act in a civil action or criminal proceeding.

(4) An individual who makes an anatomical gift pursuant to 72-17-201 or 72-17-214 and the individual's estate are not liable for any injury or damage that may result from the making or use of the anatomical gift.

History: En. Sec. 2, Ch. 340, L. 1969; R.C.M. 1947, 69-2316(d); amd. Sec. 6, Ch. 540, L. 1989.

72-17-208. Delivery of document of gift. (1) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(2) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

History: En. Sec. 5, Ch. 340, L. 1969; R.C.M. 1947, 69-2319; amd. Sec. 7, Ch. 540, L. 1989.

Cross-References

Indication on driver's license of intent to make anatomical gift, 61-5-301.

72-17-209. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 6, Ch. 340, L. 1969; R.C.M. 1947, 69-2320.

72-17-210. Renumbered 72-17-301 by Code Commissioner, 1983.

72-17-211. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 1, Ch. 219, L. 1987.

72-17-212. Repealed. Sec. 19, Ch. 540, L. 1989.

History: En. Sec. 2, Ch. 219, L. 1987.

72-17-213. Routine inquiry and required request — search and notification. (1) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to 72-17-214(1). The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in 72-17-202 or if there are medical or emotional conditions under which the request would contribute to severe emotional distress. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request and the name, response, and relationship to the patient of the person to whom the request was made. The department shall adopt rules to implement this subsection.

(2) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(a) a law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes is dead or near death; and

(b) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(3) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (2)(a) and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

(4) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to 72-17-214(1) or a release and removal of a part has been permitted pursuant to 72-17-215 or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(5) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

History: En. Sec. 13, Ch. 540, L. 1989; amd. Sec. 262, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (3) substituted "subsection (2)(a)" for "subsection (3)(a)". Amendment effective March 12, 1997.

Cross-References

Organ procurement program required, 50-5-212.

Indication on driver's license of intent to make anatomical gift, 61-5-301.

72-17-214. Making, revoking, and objecting to anatomical gifts by others. (1) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift:

(a) the spouse of the decedent;

(b) an adult son or daughter of the decedent;

(c) either parent of the decedent;

(d) an adult brother or sister of the decedent;

(e) a grandparent of the decedent; and

(f) a guardian of the person of the decedent at the time of death.

(2) An anatomical gift may not be made by a person listed in subsection (1) if:

(a) a person in a prior class is available at the time of death to make an anatomical gift;

(b) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(c) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(3) An anatomical gift by a person authorized under subsection (1) must be made by:

(a) a document of gift signed by the person; or

(b) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(4) An anatomical gift by a person authorized under subsection (1) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(5) A failure to make an anatomical gift under subsection (1) is not an objection to the making of an anatomical gift.

History: En. Sec. 11, Ch. 540, L. 1989.

72-17-215. Authorization by coroner or local public health official. (1) The coroner may release and permit the removal of a part from a body within that official's custody, for transplantation or therapy, if:

(a) the official has received a request for the part from a hospital, physician, surgeon, or procurement organization;

(b) the official has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in 72-17-214(1) of their option to make, or object to making, an anatomical gift;

(c) the official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in 72-17-214(1);

(d) the removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator;

(e) the removal will not interfere with any autopsy or investigation;

(f) the removal will be in accordance with accepted standards; and

(g) cosmetic restoration will be done, if appropriate.

(2) If the body is not within the custody of the coroner, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation or therapy if the requirements of subsection (1) are met.

(3) An official releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making

the request, the date and purpose of the request, the part requested, and the person to whom it was released.

History: **En. Sec. 12, Ch. 540, L. 1989.**

Cross-References

HIV antibody testing — testing of donors of organs, tissues, and semen required — penalty, 50-16-1008.

Part 3
Regulation — Qualifications

72-17-301. Rights and duties at death. (1) Rights of a donee created by an anatomical gift are superior to rights of others under 72-17-214(1), except with respect to autopsies. A donee may accept or reject an anatomical gift. If the donee accepts an anatomical gift of the entire body, the donee, subject to the terms of the gift, may allow embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(2) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to 72-17-201(4).

(3) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes after determination of death by a physician or surgeon.

History: **En. Sec. 7, Ch. 340, L. 1969; R.C.M. 1947, 69-2321(a), (b); MCA 1981, 72-17-210; redes. 72-17-301 by Code Commissioner, 1983; amd. Sec. 8, Ch. 540, L. 1989.**

Cross-References

HIV antibody testing — testing of donors of organs, tissues, and semen required — penalty, 50-16-1008.

72-17-302. Sale or purchase of parts prohibited. (1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a felony and upon conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 5 years, or both.

History: **En. Sec. 15, Ch. 540, L. 1989.**

72-17-303 through 72-17-310 reserved.

72-17-311. Eye enucleations — enucleators — qualifications. (1) Eye enucleations for purposes of anatomical gifts may be performed:

(a) by a licensed physician or surgeon; or
(b) by an enucleator trained in eye enucleation.

(2) An acceptable course in eye enucleation must include the anatomy and physiology of the eye, instruction in maintaining a sterile field during the enucleation procedure, and use of appropriate instruments and sterile procedures for removal and preservation of corneal tissue.

(3) Certification of satisfactory completion of a course in eye enucleation must be provided by the ophthalmologist who teaches the course. This certification qualifies an enucleator to perform eye enucleations for a period of 3 years from the date of completion of the course.

History: En. Sec. 3, Ch. 403, L. 1983; amd. Sec. 137, Ch. 370, L. 1987; amd. Sec. 9, Ch. 540, L. 1989.

72-17-312. Approval of eye banks. Any bank or storage facility that furnishes to the department written evidence of its membership and certification and reports and recommendations for future compliance, granted by the eyebank association of America, is approved for receipt and storage of eye tissue for the term of such membership and certification and is eligible during such term to be a donee of eye tissue pursuant to 72-17-202.

History: En. Sec. 4, Ch. 403, L. 1983; amd. Sec. 10, Ch. 540, L. 1989.

CHAPTERS 18 AND 19

RESERVED

CHAPTER 20

TRUSTS IN GENERAL

(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-20-101. En. Sec. 2950, Civ. C. 1895; re-en. Sec. 5364, Rev. C. 1907; re-en. Sec. 7878, R.C.M. 1921; Cal. Civ. C. Sec. 2215; Field Civ. C. Sec. 1167; re-en. Sec. 7878, R.C.M. 1935; R.C.M. 1947, 86-201.

72-20-102. En. Sec. 2951, Civ. C. 1895; re-en. Sec. 5365, Rev. C. 1907; re-en. Sec. 7879, R.C.M. 1921; Cal. Civ. C. Sec. 2216; Field Civ. C. Sec. 1168; re-en. Sec. 7879, R.C.M. 1935; R.C.M. 1947, 86-202.

72-20-103. En. Sec. 2952, Civ. C. 1895; re-en. Sec. 5366, Rev. C. 1907; re-en. Sec. 7880, R.C.M. 1921; Cal. Civ. C. Sec. 2217; Field Civ. C. Sec. 1169; re-en. Sec. 7880, R.C.M. 1935; R.C.M. 1947, 86-203.

72-20-104. En. Sec. 2953, Civ. C. 1895; re-en. Sec. 5367, Rev. C. 1907; re-en. Sec. 7881, R.C.M. 1921; Cal. Civ. C. Sec. 2218; Field Civ. C. Sec. 1170; re-en. Sec. 7881, R.C.M. 1935; R.C.M. 1947, 86-204.

72-20-105. En. Sec. 2954, Civ. C. 1895; re-en. Sec. 5368, Rev. C. 1907; re-en. Sec. 7882, R.C.M. 1921; Cal. Civ. C. Sec. 2219; Field Civ. C. Sec. 1171; re-en. Sec. 7882, R.C.M. 1935; R.C.M. 1947, 86-205.

72-20-106. En. Sec. 2955, Civ. C. 1895; re-en. Sec. 5369, Rev. C. 1907; re-en. Sec. 7883, R.C.M. 1921; Cal. Civ. C. Sec. 2220; Field Civ. C. Sec. 1172; re-en. Sec. 7883, R.C.M. 1935; R.C.M. 1947, 86-206.

72-20-107. En. Sec. 2956, Civ. C. 1895; re-en. Sec. 5370, Rev. C. 1907; re-en. Sec. 7884, R.C.M. 1921; Cal. Civ. C. Sec. 2221; Field Civ. C. Sec. 1173; re-en. Sec. 7884, R.C.M. 1935; R.C.M. 1947, 86-207.

72-20-108. En. Sec. 2957, Civ. C. 1895; re-en. Sec. 5371, Rev. C. 1907; re-en. Sec. 7885, R.C.M. 1921; Cal. Civ. C. Sec. 2222; Field Civ. C. Sec. 1174; re-en. Sec. 7885, R.C.M. 1935; R.C.M. 1947, 86-208.

72-20-109. En. Sec. 1, Ch. 218, L. 1921; re-en. Sec. 7907, R.C.M. 1921; re-en. Sec. 7907, R.C.M. 1935; R.C.M. 1947, 86-406.

72-20-110. En. Sec. 2958, Civ. C. 1895; re-en. Sec. 5372, Rev. C. 1907; re-en. Sec. 7886, R.C.M. 1921; Cal. Civ. C. Sec. 2223; Field Civ. C. Sec. 1175; re-en. Sec. 7886, R.C.M. 1935; R.C.M. 1947, 86-209.

72-20-111. En. Sec. 2959, Civ. C. 1895; re-en. Sec. 5373, Rev. C. 1907; re-en. Sec. 7887, R.C.M 1921; Cal. Civ. C. Sec. 2224; Field Civ. C. Sec. 1176; re-en. Sec. 7887, R.C.M. 1935; R.C.M. 1947, 86-210.

72-20-201. En. Sec. 2970, Civ. C. 1895; re-en. Sec. 5374, Rev. C. 1907; re-en. Sec. 7888, R.C.M. 1921; Cal. Civ. C. Sec. 2228; Field Civ. C. Sec. 1177; re-en. Sec. 7888, R.C.M. 1935; R.C.M. 1947, 86-301.

72-20-202. En. Sec. 2973, Civ. C. 1895; re-en. Sec. 5377, Rev. C. 1907; re-en. Sec. 7891, R.C.M. 1921; Cal. Civ. C. Sec. 2231; Field Civ. C. Sec. 1180; re-en. Sec. 7891, R.C.M. 1935; R.C.M. 1947, 86-304.

72-20-203. En. Secs. 2971, 2979, Civ. C. 1895; re-en. Secs. 5375, 5383, Rev. C. 1907; re-en. Secs. 7889, 7897, R.C.M. 1921; Cal. Civ. C. Secs. 2229, 2237; Field Civ. C. Secs. 1178, 1186; re-en. Secs. 7889, 7897, R.C.M. 1935; R.C.M. 1947, 86-302, 86-310.

72-20-204. En. Sec. 2972, Civ. C. 1895; re-en. Sec. 5376, Rev. C. 1907; re-en. Sec. 7890, R.C.M. 1921; Cal. Civ. C. Sec. 2230; Based on Field Civ. C. Sec. 1179; re-en. Sec. 7890, R.C.M. 1935; R.C.M. 1947, 86-303.

72-20-205. En. Sec. 2974, Civ. C. 1895; re-en. Sec. 5378, Rev. C. 1907; re-en. Sec. 7892, R.C.M. 1921; Cal. Civ. C. Sec. 2232; Field Civ. C. Sec. 1181; re-en. Sec. 7892, R.C.M. 1935; R.C.M. 1947, 86-305.

72-20-206. En. Sec. 2975, Civ. C. 1895; re-en. Sec. 5379, Rev. C. 1907; re-en. Sec. 7893, R.C.M. 1921; Cal. Civ. C. Sec. 2233; Field Civ. C. Sec. 1182; re-en. Sec. 7893, R.C.M. 1935; R.C.M. 1947, 86-306.

72-20-207. En. Sec. 2976, Civ. C. 1895; re-en. Sec. 5380, Rev. C. 1907; re-en. Sec. 7894, R.C.M. 1921; Cal. Civ. C. Sec. 2234; Field Civ. C. Sec. 1183; re-en. Sec. 7894, R.C.M. 1935; R.C.M. 1947, 86-307.

72-20-208. En. Sec. 2977, Civ. C. 1895; re-en. Sec. 5381, Rev. C. 1907; re-en. Sec. 7895, R.C.M. 1921; Cal. Civ. C. Sec. 2235; Field Civ. C. Sec. 1184; re-en. Sec. 7895, R.C.M. 1935; R.C.M. 1947, 86-308.

72-20-209. En. Sec. 2978, Civ. C. 1895; re-en. Sec. 5382, Rev. C. 1907; re-en. Sec. 7896, R.C.M. 1921; Cal. Civ. C. Sec. 2236; Field Civ. C. Sec. 1185; re-en. Sec. 7896, R.C.M. 1935; R.C.M. 1947, 86-309.

72-20-210. En. Sec. 2980, Civ. C. 1895; re-en. Sec. 5384, Rev. C. 1907; re-en. Sec. 7898, R.C.M. 1921; Cal. Civ. C. Sec. 2238; Field Civ. C. Sec. 1187; re-en. Sec. 7898, R.C.M. 1935; R.C.M. 1947, 86-311.

72-20-211. En. Sec. 2981, Civ. C. 1895; re-en. Sec. 5385, Rev. C. 1907; re-en. Sec. 7899, R.C.M. 1921; Cal. Civ. C. Sec. 2239; Field Civ. C. Sec. 1188; re-en. Sec. 7899, R.C.M. 1935; R.C.M. 1947, 86-312.

72-20-301. En. Sec. 2990, Civ. C. 1895; re-en. Sec. 5386, Rev. C. 1907; re-en. Sec. 7900, R.C.M. 1921; Cal. Civ. C. Sec. 2243; Field Civ. C. Sec. 1189; re-en. Sec. 7900, R.C.M. 1935; R.C.M. 1947, 86-313.

72-20-302. En. Sec. 2991, Civ. C. 1895; re-en. Sec. 5387, Rev. C. 1907; re-en. Sec. 7901, R.C.M. 1921; Cal. Civ. C. Sec. 2244; Field Civ. C. Sec. 1190; re-en. Sec. 7901, R.C.M. 1935; R.C.M. 1947, 86-314.

72-20-401. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-402. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-403. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-404. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-405. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-406. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-407. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part); amd. Sec. 12, Ch. 2, L. 1983.

72-20-408. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part).

72-20-409. En. Sec. 1, Ch. 24, L. 1969; R.C.M. 1947, 86-513(part); amd. Sec. 30, Ch. 6, L. 1979.

72-20-501. En. Sec. 1530, Civ. C. 1895; re-en. Sec. 4630, Rev. C. 1907; re-en. Sec. 6877, R.C.M. 1921; Cal. Civ. C. Sec. 1135; Based on Field Civ. C. Sec. 495; re-en. Sec. 6877, R.C.M. 1935; R.C.M. 1947, 67-1701.

CHAPTER 21

TRUSTEES' POWERS ACT

(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-21-101. En. 86-910 by Sec. 9, Ch. 297, L. 1974; R.C.M. 1947, 86-910.

72-21-102. En. 86-908 by Sec. 7, Ch. 297, L. 1974; R.C.M. 1947, 86-908.

72-21-103. En. 86-909 by Sec. 8, Ch. 297, L. 1974; R.C.M. 1947, 86-909.

72-21-104. En. 86-902 by Sec. 1, Ch. 297, L. 1974; R.C.M. 1947, 86-902.

72-21-201. En. 86-903 by Sec. 2, Ch. 297, L. 1974; R.C.M. 1947, 86-903.

72-21-202. En. 86-904 by Sec. 3, Ch. 297, L. 1974; R.C.M. 1947, 86-904(1), (3); amd. Sec. 1, Ch. 93, L. 1981; amd. Sec. 2, Ch. 145, L. 1989.

72-21-203. En. 86-904 by Sec. 3, Ch. 297, L. 1974; R.C.M. 1947, 86-904(2).

72-21-204. En. 86-906 by Sec. 5, Ch. 297, L. 1974; R.C.M. 1947, 86-906.

72-21-205. En. 86-905 by Sec. 4, Ch. 297, L. 1974; amd. Sec. 9, Ch. 401, L. 1975; R.C.M. 1947, 86-905.

72-21-206. En. 86-907 by Sec. 6, Ch. 297, L. 1974; R.C.M. 1947, 86-907.

CHAPTER 22

CONVEYANCE OF TRUST PROPERTY BY COURT ORDER

(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-22-101. En. Sec. 1, Ch. 265, L. 1947; R.C.M. 1947, 86-315(part).

72-22-102. En. Sec. 1, Ch. 265, L. 1947; R.C.M. 1947, 86-315(part).

72-22-103. En. Sec. 2, Ch. 265, L. 1947; R.C.M. 1947, 86-316.

72-22-104. En. Sec. 3, Ch. 265, L. 1947; R.C.M. 1947, 86-317.

72-22-105. En. Sec. 12, Ch. 265, L. 1947; R.C.M. 1947, 86-326.

72-22-201. En. Sec. 5, Ch. 265, L. 1947; R.C.M. 1947, 86-319.

72-22-202. En. Sec. 4, Ch. 265, L. 1947; R.C.M. 1947, 86-318(part).

72-22-203. En. Sec. 4, Ch. 265, L. 1947; R.C.M. 1947, 86-318(part).

72-22-204. En. Sec. 6, Ch. 265, L. 1947; R.C.M. 1947, 86-320.

72-22-205. En. Sec. 7, Ch. 265, L. 1947; R.C.M. 1947, 86-321.

72-22-206. En. Sec. 8, Ch. 265, L. 1947; R.C.M. 1947, 86-322.

72-22-207. En. Sec. 9, Ch. 265, L. 1947; R.C.M. 1947, 86-323(part).

72-22-208. En. Sec. 9, Ch. 265, L. 1947; R.C.M. 1947, 86-323(part).

72-22-209. En. Sec. 11, Ch. 265, L. 1947; R.C.M. 1947, 86-325.

72-22-210. En. Sec. 10, Ch. 265, L. 1947; R.C.M. 1947, 86-324.

CHAPTER 23

TRUSTS FOR BENEFIT OF THIRD PERSONS

(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-23-101. En. Sec. 3000, Civ. C. 1895; re-en. Sec. 5388, Rev. C. 1907; re-en. Sec. 7902, R.C.M. 1921; Cal. Civ. C. Sec. 2250; Field Civ. C. Sec. 1191; re-en. Sec. 7902, R.C.M. 1935; R.C.M. 1947, 86-401.

72-23-201. En. Sec. 3001, Civ. C. 1895; re-en. Sec. 5389, Rev. C. 1907; re-en. Sec. 7903, R.C.M. 1921; Cal. Civ. C. Sec. 2251; Field Civ. C. Sec. 1192; re-en. Sec. 7903, R.C.M. 1935; R.C.M. 1947, 86-402.

72-23-202. En. Sec. 3002, Civ. C. 1895; re-en. Sec. 5390, Rev. C. 1907; re-en. Sec. 7904, R.C.M. 1921; Cal. Civ. C. Sec. 2252; Field Civ. C. Sec. 1193; re-en. Sec. 7904, R.C.M. 1935; R.C.M. 1947, 86-403.

72-23-203. En. Sec. 3003, Civ. C. 1895; re-en. Sec. 5391, Rev. C. 1907; re-en. Sec. 7905, R.C.M. 1921; Cal. Civ. C. Sec. 2253; Field Civ.

C. Sec. 1194; re-en. Sec. 7905, R.C.M. 1935; R.C.M. 1947, 86-404.

72-23-204. En. Sec. 3004, Civ. C. 1895; re-en. Sec. 5392, Rev. C. 1907; re-en. Sec. 7906, R.C.M. 1921; Cal. Civ. C. Sec. 2254; Field Civ. C. Sec. 1195; re-en. Sec. 7906, R.C.M. 1935; R.C.M. 1947, 86-405.

72-23-301. En. Sec. 3010, Civ. C. 1895; re-en. Sec. 5393, Rev. C. 1907; re-en. Sec. 7908, R.C.M. 1921; Cal. Civ. C. Sec. 2258; Field Civ. C. Sec. 1196; re-en. Sec. 7908, R.C.M. 1935; R.C.M. 1947, 86-501.

72-23-302. En. Sec. 3011, Civ. C. 1895; re-en. Sec. 5394, Rev. C. 1907; re-en. Sec. 7909, R.C.M. 1921; Cal. Civ. C. Sec. 2259; Field Civ. C. Sec. 1197; re-en. Sec. 7909, R.C.M. 1935; R.C.M. 1947, 86-502.

72-23-303. En. Sec. 3013, Civ. C. 1895; re-en. Sec. 5396, Rev. C. 1907; re-en. Sec. 7911, R.C.M. 1921; Cal. Civ. C. Sec. 2261; Field Civ. C. Sec. 1199; re-en. Sec. 7911, R.C.M. 1935; R.C.M. 1947, 86-504.

72-23-304. En. Sec. 3014, Civ. C. 1895; re-en. Sec. 5397, Rev. C. 1907; re-en. Sec. 7912, R.C.M. 1921; Cal. Civ. C. Sec. 2262; Field Civ. C. Sec. 1200; re-en. Sec. 7912, R.C.M. 1935; R.C.M. 1947, 86-505.

72-23-305. En. Sec. 3015, Civ. C. 1895; re-en. Sec. 5398, Rev. C. 1907; re-en. Sec. 7913, R.C.M. 1921; Cal. Civ. C. Sec. 2263; Field Civ. C. Sec. 1201; re-en. Sec. 7913, R.C.M. 1935; R.C.M. 1947, 86-506.

72-23-306. En. Sec. 3022, Civ. C. 1895; re-en. Sec. 5401, Rev. C. 1907; re-en. Sec. 7916, R.C.M. 1921; Cal. Civ. C. Sec. 2269; Field Civ. C. Sec. 1204; re-en. Sec. 7916, R.C.M. 1935; R.C.M. 1947, 86-509.

72-23-307. En. Sec. 3020, Civ. C. 1895; re-en. Sec. 5399, Rev. C. 1907; re-en. Sec. 7914, R.C.M. 1921; Cal. Civ. C. Sec. 2267; Field Civ. C. Sec. 1202; re-en. Sec. 7914, R.C.M. 1935; R.C.M. 1947, 86-507.

72-23-308. En. Sec. 3021, Civ. C. 1895; re-en. Sec. 5400, Rev. C. 1907; re-en. Sec. 7915, R.C.M. 1921; Cal. Civ. C. Sec. 2268; Field Civ. C. Sec. 1203; re-en. Sec. 7915, R.C.M. 1935; R.C.M. 1947, 86-508.

72-23-401. En. Sec. 3030, Civ. C. 1895; re-en. Sec. 5402, Rev. C. 1907; re-en. Sec. 7917, R.C.M. 1921; Cal. Civ. C. Sec. 2273; Field Civ. C. Sec. 1205; re-en. Sec. 7917, R.C.M. 1935; R.C.M. 1947, 86-510.

72-23-402. En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; amd. Sec. 7918, R.C.M. 1921; Cal. Civ. C. Sec. 2274; Field Civ. C. Sec. 1206; re-en. Sec. 7918, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1965; R.C.M. 1947, 86-511.

72-23-403. En. Sec. 3032, Civ. C. 1895; re-en. Sec. 5404, Rev. C. 1907; re-en. Sec. 7919, R.C.M. 1921; Cal. Civ. C. Sec. 2275; Field Civ. C. Sec. 1207; re-en. Sec. 7919, R.C.M. 1935; R.C.M. 1947, 86-512.

72-23-501. En. Sec. 3040, Civ. C. 1895; re-en. Sec. 5405, Rev. C. 1907; re-en. Sec. 7920, R.C.M. 1921; Cal. Civ. C. Sec. 2279; Field Civ. C. Sec. 1208; re-en. Sec. 7920, R.C.M. 1935; R.C.M. 1947, 86-601.

72-23-502. En. Sec. 3041, Civ. C. 1895; re-en. Sec. 5406, Rev. C. 1907; re-en. Sec. 7921, R.C.M. 1921; Cal. Civ. C. Sec. 2280; Field Civ. C. Sec. 1209; re-en. Sec. 7921, R.C.M. 1935; R.C.M. 1947, 86-602.

72-23-503. En. Sec. 3042, Civ. C. 1895; re-en. Sec. 5407, Rev. C. 1907; re-en. Sec. 7922, R.C.M. 1921; Cal. Civ. C. Sec. 2281; Field Civ. C. Sec. 1210; re-en. Sec. 7922, R.C.M. 1935; R.C.M. 1947, 86-603.

72-23-504. En. Sec. 3043, Civ. C. 1895; re-en. Sec. 5408, Rev. C. 1907; re-en. Sec. 7923, R.C.M. 1921; Cal. Civ. C. Sec. 2282; Field Civ. C. Sec. 1211; re-en. Sec. 7923, R.C.M. 1935; R.C.M. 1947, 86-604.

72-23-505. En. Sec. 3012, Civ. C. 1895; re-en. Sec. 5395, Rev. C. 1907; re-en. Sec. 7910, R.C.M. 1921; Cal. Civ. C. Sec. 2260; Field Civ. C. Sec. 1198; re-en. Sec. 7910, R.C.M. 1935; R.C.M. 1947, 86-503.

72-23-506. En. Sec. 3044, Civ. C. 1895; re-en. Sec. 5409, Rev. C. 1907; re-en. Sec. 7924, R.C.M. 1921; Cal. Civ. C. Sec. 2283; Based on Field Civ. C. Sec. 1212; re-en. Sec. 7924, R.C.M. 1935; R.C.M. 1947, 86-605.

72-23-507. En. Sec. 3050, Civ. C. 1895; re-en. Sec. 5410, Rev. C. 1907; re-en. Sec. 7925, R.C.M. 1921; Cal. Civ. C. Sec. 2287; Based on Field Civ. C. Sec. 1213; re-en. Sec. 7925, R.C.M. 1935; R.C.M. 1947, 86-606.

72-23-508. En. Sec. 3052, Civ. C. 1895; re-en. Sec. 5412, Rev. C. 1907; re-en. Sec. 7927, R.C.M. 1921; Cal. Civ. C. Sec. 2289; Based on Field Civ. C. Sec. 1215; re-en. Sec. 7927, R.C.M. 1935; R.C.M. 1947, 86-608.

CHAPTER 24

TRUSTS IN RELATION TO REAL PROPERTY

(Repealed. Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-24-101. En. Sec. 1310, Civ. C. 1895; re-en. Sec. 4536, Rev. C. 1907; re-en. Sec. 6783, R.C.M. 1921; Cal. Civ. C. Sec. 847; re-en. Sec. 6783, R.C.M. 1935; R.C.M. 1947, 86-101.

72-24-102. En. Sec. 1311, Civ. C. 1895; re-en. Sec. 4537, Rev. C. 1907; re-en. Sec. 6784, R.C.M. 1921; Cal. Civ. C. Sec. 852; Field Civ. C. Sec. 280; re-en. Sec. 6784, R.C.M. 1935; R.C.M. 1947, 86-102.

72-24-103. En. Sec. 1314, Civ. C. 1895; re-en. Sec. 4540, Rev. C. 1907; re-en. Sec. 6787, R.C.M. 1921; Cal. Civ. C. Sec. 857; Based on Field Civ. C. Sec. 285; re-en. Sec. 6787, R.C.M. 1935; R.C.M. 1947, 86-105; amd. Sec. 31, Ch. 6, L. 1979.

72-24-104. En. Sec. 1312, Civ. C. 1895; re-en. Sec. 4538, Rev. C. 1907; re-en. Sec. 6785, R.C.M. 1921; Cal. Civ. C. Sec. 853; Field Civ. C. Sec. 281; re-en. Sec. 6785, R.C.M. 1935; R.C.M. 1947, 86-103.

72-24-201. En. Sec. 1317, Civ. C. 1895; re-en. Sec. 4543, Rev. C. 1907; re-en. Sec. 6790, R.C.M. 1921; Cal. Civ. C. Sec. 863; Field Civ. C. Sec. 291; re-en. Sec. 6790, R.C.M. 1935; R.C.M. 1947, 86-108.

72-24-202. En. Sec. 1318, Civ. C. 1895; re-en. Sec. 4544, Rev. C. 1907; re-en. Sec. 6791, R.C.M. 1921; Cal. Civ. C. Sec. 864; Field Civ. C. Sec. 292; re-en. Sec. 6791, R.C.M. 1935; R.C.M. 1947, 86-109.

72-24-203. En. Sec. 1319, Civ. C. 1895; re-en. Sec. 4545, Rev. C. 1907; re-en. Sec. 6792, R.C.M. 1921; Cal. Civ. C. Sec. 865; Field Civ. C. Sec. 293; re-en. Sec. 6792, R.C.M. 1935; R.C.M. 1947, 86-110.

72-24-204. En. Sec. 1320, Civ. C. 1895; re-en. Sec. 4546, Rev. C. 1907; re-en. Sec. 6793, R.C.M. 1921; Cal. Civ. C. Sec. 866; Field Civ. C. Sec. 294; re-en. Sec. 6793, R.C.M. 1935; R.C.M. 1947, 86-111.

72-24-205. En. Sec. 1321, Civ. C. 1895; re-en. Sec. 4547, Rev. C. 1907; re-en. Sec. 6794, R.C.M. 1921; Cal. Civ. C. Sec. 867; Based on Field Civ. C. Secs. 295 and 296; re-en. Sec. 6794, R.C.M. 1935; R.C.M. 1947, 86-112.

72-24-206. En. Sec. 1323, Civ. C. 1895; re-en. Sec. 4549, Rev. C. 1907; re-en. Sec. 6796, R.C.M. 1921; Cal. Civ. C. Sec. 870; Field Civ. C. Sec. 298; re-en. Sec. 6796, R.C.M. 1935; R.C.M. 1947, 86-114.

72-24-207. En. Sec. 1316, Civ. C. 1895; re-en. Sec. 4542, Rev. C. 1907; re-en. Sec. 6789, R.C.M. 1921; Cal. Civ. C. Sec. 860; Field Civ. C. Sec. 323; re-en. Sec. 6789, R.C.M. 1935; R.C.M. 1947, 86-107.

72-24-208. En. Sec. 1313, Civ. C. 1895; re-en. Sec. 4539, Rev. C. 1907; re-en. Sec. 6786, R.C.M. 1921; Cal. Civ. C. Sec. 856; Field Civ. C. Sec. 284; re-en. Sec. 6786, R.C.M. 1935; R.C.M. 1947, 86-104.

72-24-209. En. Sec. 1322, Civ. C. 1895; re-en. Sec. 4548, Rev. C. 1907; re-en. Sec. 6795, R.C.M. 1921; Cal. Civ. C. Sec. 869; Based on Field Civ. C. Sec. 297; re-en. Sec. 6795, R.C.M. 1935; R.C.M. 1947, 86-113.

72-24-210. En. Sec. 1315, Civ. C. 1895; re-en. Sec. 4541, Rev. C. 1907; re-en. Sec. 6788, R.C.M. 1921; Cal. Civ. C. Sec. 859; Field Civ. C. Sec. 287; re-en. Sec. 6788, R.C.M. 1935; R.C.M. 1947, 86-106.

72-24-211. En. Sec. 1324, Civ. C. 1895; re-en. Sec. 4550, Rev. C. 1907; re-en. Sec. 6797, R.C.M. 1921; Cal. Civ. C. Sec. 871; Field Civ. C. Sec. 299; re-en. Sec. 6797, R.C.M. 1935; R.C.M. 1947, 86-115.

CHAPTER 25

REVISED UNIFORM PRINCIPAL AND INCOME ACT

(Repealed. Sec. 16, Ch. 371, L. 1983; Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Histories of Repealed Sections:

72-25-101. En. Sec. 15, Ch. 277, L. 1959; R.C.M. 1947, 67-1915; amd. Sec. 1, Ch. 371, L. 1983.

72-25-102. En. Sec. 1, Ch. 277, L. 1959; R.C.M. 1947, 67-1901; amd. Sec. 2, Ch. 371, L. 1983.

72-25-103. En. Sec. 17, Ch. 277, L. 1959; R.C.M. 1947, 67-1916(part); amd. Sec. 3, Ch. 371, L. 1983.

72-25-104. En. Sec. 2, Ch. 277, L. 1959; R.C.M. 1947, 67-1902.

72-25-105. En. Sec. 14, Ch. 277, L. 1959; R.C.M. 1947, 67-1914; amd. Sec. 4, Ch. 371, L. 1983.

72-25-201. En. Sec. 3, Ch. 277, L. 1959; R.C.M. 1947, 67-1903.

72-25-202. En. Sec. 4, Ch. 277, L. 1959; R.C.M. 1947, 67-1904.

72-25-203. En. Sec. 5, Ch. 277, L. 1959; R.C.M. 1947, 67-1905.

72-25-204. En. Sec. 6, Ch. 277, L. 1959; R.C.M. 1947, 67-1906.

72-25-205. En. Sec. 7, Ch. 277, L. 1959; R.C.M. 1947, 67-1907.

72-25-206. En. Sec. 8, Ch. 277, L. 1959; R.C.M. 1947, 67-1908.

72-25-207. En. Sec. 9, Ch. 277, L. 1959; R.C.M. 1947, 67-1909.

72-25-208. En. Sec. 10, Ch. 277, L. 1959; R.C.M. 1947, 67-1910.

72-25-209. En. Sec. 11, Ch. 277, L. 1959; R.C.M. 1947, 67-1911.

72-25-301. En. Sec. 12, Ch. 277, L. 1959; amd. Sec. 1, Ch. 134, L. 1965; R.C.M. 1947, 67-1912.

72-25-302. En. Sec. 13, Ch. 277, L. 1959; R.C.M. 1947, 67-1913.

72-25-401. En. Sec. 5, Ch. 371, L. 1983.

72-25-402. En. Sec. 6, Ch. 371, L. 1983.

72-25-403. En. Sec. 7, Ch. 371, L. 1983.

72-25-404. En. Sec. 8, Ch. 371, L. 1983.

72-25-405. En. Sec. 9, Ch. 371, L. 1983.

72-25-406. En. Sec. 10, Ch. 371, L. 1983.

72-25-407. En. Sec. 11, Ch. 371, L. 1983.

72-25-408. En. Sec. 12, Ch. 371, L. 1983.

72-25-409. En. Sec. 13, Ch. 371, L. 1983.

72-25-410. En. Sec. 14, Ch. 371, L. 1983.

72-25-411. En. Sec. 15, Ch. 371, L. 1983.

CHAPTER 26

UNIFORM TRANSFERS TO MINORS ACT

Part 1 — Uniform Gifts to Minors Act General Provisions (Repealed. Sec. 25, Ch. 102, L. 1985)

Part 2 — Uniform Gifts to Minors Act Making and Effect of Gift (Repealed. Sec. 25, Ch. 102, L. 1985)

Part 3 — Uniform Gifts to Minors Act Gift Administration—Custodian (Repealed. Sec. 25, Ch. 102, L. 1985)

Part 4 — Uniform Gifts to Minors Act Resignation, Death, or Removal of Custodian—Bonding—Successor (Repealed. Sec. 25, Ch. 102, L. 1985)

Part 5 — General Provisions

72-26-501. Short title.
72-26-502. Definitions.
72-26-503. Scope and jurisdiction.
72-26-504. Applicability.
72-26-505. Effect on existing custodianships.
72-26-506. Uniformity of application and construction.

Part 6 — Manner of Creating Custodial Property and Effecting Transfer

72-26-601. Nomination of custodian.
72-26-602. Single custodianship.
72-26-603. Manner of creating custodial property and effecting transfer — designation of initial custodian — control.

72-26-604. Transfer by gift or exercise of power of appointment.
72-26-605. Transfer authorized by will or trust.
72-26-606. Other transfer by fiduciary.
72-26-607. Transfer by obligor.
72-26-608. Receipt for custodial property.
72-26-609. Validity and effect of transfer.

Part 7 — Administration by Custodian—Liability

72-26-701. Powers of custodian.
72-26-702. Care of custodial property.
72-26-703. Use of custodial property.
72-26-704. Custodian's expenses, compensation, and bond.
72-26-705. Exemption of third person from liability.
72-26-706. Liability to third persons.

Part 8 — Renunciation, Resignation, Death, or Removal of Custodian—Accounting—Termination—Successor

72-26-801. Renunciation, resignation, death, or removal of custodian — designation of successor custodian.
72-26-802. Accounting by and determination of liability of custodian.
72-26-803. Termination of custodianship.

Part 1

Uniform Gifts to Minors Act
General Provisions
(Repealed. Sec. 25, Ch. 102, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

72-26-101. En. Sec. 10, Ch. 245, L. 1957; amd. Sec. 7, Ch. 234, L. 1967; R.C.M. 1947, 67-1810.

72-26-102. En. Sec. 1, Ch. 245, L. 1957; amd. Sec. 1, Ch. 234, L. 1967; amd. Sec. 11, Ch. 423, L. 1971; R.C.M. 1947, 67-1801.

72-26-103. En. Sec. 9, Ch. 245, L. 1957; R.C.M. 1947, 67-1809.

72-26-104. En. Sec. 12, Ch. 245, L. 1957; amd. Sec. 8, Ch. 234, L. 1967; R.C.M. 1947, 67-1811.

Part 2

Uniform Gifts to Minors Act
Making and Effect of Gift
(Repealed. Sec. 25, Ch. 102, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

72-26-201. En. Sec. 2, Ch. 245, L. 1957; amd. Sec. 2, Ch. 234, L. 1967; R.C.M. 1947, 67-1802; amd. Sec. 32, Ch. 6, L. 1979; amd. Sec. 1, Ch. 8, L. 1981.

72-26-202. En. Sec. 3, Ch. 245, L. 1957; amd. Sec. 3, Ch. 234, L. 1967; R.C.M. 1947, 67-1803.

Part 3

Uniform Gifts to Minors Act Gift Administration — Custodian (Repealed. Sec. 25, Ch. 102, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

72-26-301. En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(d).

72-26-302. En. Sec. 4, Ch. 245, L. 1957; amd. Sec. 4, Ch. 234, L. 1967; amd. Sec. 12, Ch. 423, L. 1971; R.C.M. 1947, 67-1804.

72-26-303. En. Sec. 6, Ch. 245, L. 1957; amd. Sec. 5, Ch. 234, L. 1967; R.C.M. 1947, 67-1806.

72-26-304. En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(a) thru (c).

72-26-305. En. Sec. 5, Ch. 245, L. 1957; R.C.M. 1947, 67-1805(e).

72-26-306. En. Sec. 8, Ch. 245, L. 1957; R.C.M. 1947, 67-1808.

Part 4

Uniform Gifts to Minors Act Resignation, Death, or Removal of Custodian — Bonding — Successor (Repealed. Sec. 25, Ch. 102, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

72-26-401. En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part).

72-26-402. En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part); amd. Sec. 33, Ch. 6, L. 1979.

72-26-403. En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(part).

72-26-404. En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971; R.C.M. 1947, 67-1807(e), (f).

Part 5

General Provisions

72-26-501. Short title. This chapter may be cited as the "Montana Uniform Transfers to Minors Act".

History: En. Sec. 1, Ch. 102, L. 1985.

72-26-502. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who has attained the age of 21 years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means district court.

(6) "Custodial property" means:

(a) any interest in property transferred to a custodian under this chapter; and

(b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of 21 years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

History: En. Sec. 3, Ch. 102, L. 1985; amd. Sec. 29, Ch. 582, L. 1989.

72-26-503. Scope and jurisdiction. (1) This chapter applies to a transfer that refers to this chapter in the designation under 72-26-603(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

History: En. Sec. 4, Ch. 102, L. 1985.

72-26-504. Applicability. This chapter applies to a transfer within the scope of 72-26-503 made after October 1, 1985, if:

(1) the transfer purports to have been made under the provisions of Title 72, chapter 26, parts 1 through 4 (repealed by section 25, Chapter 102, Laws of 1985);

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

History: **En. Sec. 23, Ch. 102, L. 1985.**

72-26-505. Effect on existing custodianships. (1) Any transfer of custodial property as now defined in this chapter made before October 1, 1985, is validated notwithstanding that there was no specific authority in Title 72, chapter 26, parts 1 through 4 (repealed by section 25, Chapter 102, Laws of 1985), for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before October 1, 1985, in a manner and form prescribed in Title 72, chapter 26, parts 1 through 4 (repealed by section 25, Chapter 102, Laws of 1985), except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on October 1, 1985.

(3) Sections 72-26-502 and 72-26-803, with respect to the age of a minor for whom custodial property is held under this chapter, do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 before October 1, 1985.

History: **En. Sec. 24, Ch. 102, L. 1985.**

72-26-506. Uniformity of application and construction. This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History: **En. Sec. 2, Ch. 102, L. 1985.**

Part 6

Manner of Creating Custodial Property and Effecting Transfer

72-26-601. Nomination of custodian. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under 72-26-603(1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a

transfer to the nominated custodian is completed under 72-26-603. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to 72-26-603.

History: En. Sec. 5, Ch. 102, L. 1985.

72-26-602. Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

History: En. Sec. 12, Ch. 102, L. 1985.

72-26-603. Manner of creating custodial property and effecting transfer — designation of initial custodian — control. (1) Custodial property is created and a transfer is made whenever:

(a) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2);

(b) money is paid or delivered or a security held in the name of a broker, financial institution, or its nominee is transferred to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(c) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(d) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(e) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act";

(f) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(g) an interest in any property not described in subsections (1)(a) through (1)(f) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2).

(2) An instrument in the following form satisfies the requirements of subsections (1)(a)(ii) and (1)(g):

"TRANSFER UNDER THE MONTANA
UNIFORM TRANSFERS TO MINORS ACT

I, ... (name of transferor or name and representative capacity if a fiduciary), hereby transfer to .... (name of custodian), as custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: ....
....
(Signature)

.... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Montana Uniform Transfers to Minors Act.

Dated: ....
....
(Signature of Custodian)"

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

History: En. Sec. 11, Ch. 102, L. 1985; amd. Sec. 1, Ch. 86, L. 1987.

72-26-604. Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to or the irrevocable exercise of a power of appointment in favor of a custodian for the benefit of a minor pursuant to 72-26-603.

History: En. Sec. 6, Ch. 102, L. 1985.

72-26-605. Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer pursuant to 72-26-603 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under 72-26-601 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under 72-26-601 or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under 72-26-603(1).

History: En. Sec. 7, Ch. 102, L. 1985.

72-26-606. Other transfer by fiduciary. (1) Subject to subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to 72-26-603, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to 72-26-603.

(3) A transfer under subsection (1) or (2) may be made only if:

(a) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;

(b) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(c) the transfer is authorized by the court if it exceeds $10,000 in value.

History: En. Sec. 8, Ch. 102, L. 1985.

Cross-References

Subsidiary trust companies, Title 32, ch. 1, part 8.

72-26-607. Transfer by obligor. (1) Subject to subsections (2) and (3), a person not subject to 72-26-605 or 72-26-606 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to 72-26-603.

(2) If a person having the right to do so under 72-26-601 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under 72-26-601 or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

History: En. Sec. 9, Ch. 102, L. 1985.

72-26-608. Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

History: En. Sec. 10, Ch. 102, L. 1985.

72-26-609. Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) failure of the transferor to comply with 72-26-603(3) concerning possession and control;

(b) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under 72-26-603(1); or

(c) death or incapacity of a person nominated under 72-26-601 or designated under 72-26-603 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to 72-26-603 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

History: En. Sec. 13, Ch. 102, L. 1985.

Part 7

Administration by Custodian — Liability

72-26-701. Powers of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of 72-26-702.

History: En. Sec. 15, Ch. 102, L. 1985.

72-26-702. Care of custodial property. (1) A custodian shall:

(a) take control of custodial property;

(b) register or record title to custodial property if appropriate; and

(c) collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:

(a) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian, in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered or held in an account designated in the name of the custodian, followed in substance by the words: "as a custodian for .... (name of minor) under the Montana Uniform Transfers to Minors Act".

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

History: En. Sec. 14, Ch. 102, L. 1985.

72-26-703. Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(a) the duty or ability of the custodian personally or of any other person to support the minor; or

(b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

History: En. Sec. 16, Ch. 102, L. 1985.

72-26-704. Custodian's expenses, compensation, and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under 72-26-604, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in 72-26-801(6), a custodian need not give a bond.

History: En. Sec. 17, Ch. 102, L. 1985.

72-26-705. Exemption of third person from liability. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) the validity of the purported custodian's designation;

(2) the propriety of or the authority under this chapter for any act of the purported custodian;

(3) the validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) the propriety of the application of any property of the minor delivered to the purported custodian.

History: **En. Sec. 18, Ch. 102, L. 1985.**

72-26-706. Liability to third persons. (1) A claim may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor when it is based on:

(a) a contract entered into by a custodian acting in a custodial capacity;

(b) an obligation arising from the ownership or control of custodial property; or

(c) a tort committed during the custodianship.

(2) A custodian is not personally liable:

(a) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

History: **En. Sec. 19, Ch. 102, L. 1985.**

Part 8

Renunciation, Resignation, Death, or Removal of Custodian — Accounting — Termination — Successor

72-26-801. Renunciation, resignation, death, or removal of custodian — designation of successor custodian. (1) A person nominated under 72-26-601 or designated under 72-26-603 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under 72-26-601, the person who made the nomination may nominate a substitute custodian under 72-26-601; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under 72-26-603(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under 72-26-604 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the

successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (2), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) or resigns under subsection (3) or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under 72-26-604 or to require the custodian to give appropriate bond.

History: En. Sec. 20, Ch. 102, L. 1985.

72-26-802. Accounting by and determination of liability of custodian. (1) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

(a) for an accounting by the custodian or the custodian's legal representative; or

(b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under 72-26-706 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under 72-26-801(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: En. Sec. 21, Ch. 102, L. 1985.

72-26-803. Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's attainment of 21 years of age with respect to custodial property transferred under 72-26-604 or 72-26-605;

(2) the minor's attainment of 18 years of age with respect to custodial property transferred under 72-26-606 or 72-26-607; or

(3) the minor's death.

History: En. Sec. 22, Ch. 102, L. 1985.

CHAPTER 27

MISCELLANEOUS PROVISIONS RELATING TO TRUSTS (Repealed and Renumbered.

Sec. 220, Ch. 685, L. 1989)

Chapter Compiler's Comments

Sections Repealed and Renumbered:

72-27-101. Repealed. Sec. 220, Ch. 685, L. 1989.

72-27-102. Repealed. Sec. 220, Ch. 685, L. 1989.

72-27-201. Renumbered 72-37-101 by Code Commissioner, 1989.

72-27-202. Renumbered 72-37-102 by Code Commissioner, 1989.

72-27-203. Renumbered 72-37-103 by Code Commissioner, 1989.

72-27-204. Renumbered 72-37-104 by Code Commissioner, 1989.

Histories of Repealed Sections:

72-27-101. En. 86-707 by Sec. 1, Ch. 332, L. 1974; R.C.M. 1947, 86-707(1).

72-27-102. En. 86-707 by Sec. 1, Ch. 332, L. 1974; R.C.M. 1947, 86-707(2).

CHAPTERS 28 AND 29

RESERVED

CHAPTER 30

MANAGEMENT OF INSTITUTIONAL FUNDS

Part 1 — General Provisions

72-30-101. Short title.
72-30-102. Definitions.
72-30-103. Uniformity of construction.

Part 2 — Management of Funds

72-30-201. Endowment funds subject to appropriation and expenditure — net appreciation.
72-30-202. Determination of historic dollar value by institution conclusive.
72-30-203. Donor's intention restricting expenditure of net appreciation.
72-30-204. Allowable investments — retention of property.
72-30-205. Delegation of investment authority — advisory service.
72-30-206. Standard of care in management.
72-30-207. Release of restrictions in gift instrument.

Chapter Cross-References

Uniform Common Trust Act, Title 32, ch. 1, part 7.

Subsidiary trust companies, Title 32, ch. 1, part 8.

Trust Code — general provisions, Title 72, ch. 33.

Part 1
General Provisions

72-30-101. Short title. This chapter may be cited as the "Uniform Management of Institutional Funds Act".

History: En. Sec. 10, Ch. 389, L. 1973; R.C.M. 1947, 86-809.

72-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Endowment fund" means an institutional fund or any part thereof not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(2) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

(3) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(4) "Historic dollar value" means the aggregate fair value in dollars of:

(a) an endowment fund at the time it became an endowment fund;

(b) each subsequent donation to the fund at the time it is made; and

(c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

(5) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(6) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes but does not include:

(a) a fund held for an institution by a trustee that is not an institution; or

(b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

History: En. Sec. 1, Ch. 389, L. 1973; R.C.M. 1947, 86-801(part).

72-30-103. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. Sec. 9, Ch. 389, L. 1973; R.C.M. 1947, 86-808.

Part 2
Management of Funds

72-30-201. Endowment funds subject to appropriation and expenditure — net appreciation. (1) The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by 72-30-206.

(2) This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

History: En. Sec. 2, Ch. 389, L. 1973; R.C.M. 1947, 86-802.

72-30-202. Determination of historic dollar value by institution conclusive. The determination of historic dollar value made in good faith by the institution is conclusive.

History: En. Sec. 1, Ch. 389, L. 1973; R.C.M. 1947, 86-801(part).

72-30-203. Donor's intention restricting expenditure of net appreciation. (1) Section 72-30-201 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.

(2) A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment or from a direction or authorization in the applicable gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits" or "to preserve the principal intact" or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after July 1, 1973.

History: En. Sec. 3, Ch. 389, L. 1973; R.C.M. 1947, 86-803.

72-30-204. Allowable investments — retention of property. In addition to an investment otherwise authorized by law or by the applicable gift instrument and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investment by a fiduciary, may:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations; shares in or obligations of associations, partnerships, or individuals; and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

History: En. Sec. 4, Ch. 389, L. 1973; R.C.M. 1947, 86-804; amd. Sec. 34, Ch. 6, L. 1979.

72-30-205. Delegation of investment authority — advisory service. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) delegate to its committees, officers, or employees of the institution or the fund or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies so to act; and

(3) authorize the payment of compensation for investment advisory or management services.

History: En. Sec. 5, Ch. 389, L. 1973; R.C.M. 1947, 86-805.

72-30-206. Standard of care in management. In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

History: En. Sec. 6, Ch. 389, L. 1973; R.C.M. 1947, 86-806.

72-30-207. Release of restrictions in gift instrument. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy-pres.

History: En. Sec. 7, Ch. 389, L. 1973; R.C.M. 1947, 86-807.

CHAPTER 31

MISCELLANEOUS PROVISIONS RELATING TO FIDUCIARIES

Part 1 — General

72-31-101. Oath in behalf of corporation acting as fiduciary.
72-31-102. Investment by fiduciaries in home owners' loan corporation bonds authorized.

72-31-103. Validation of fiduciary sales.

Part 2 — Statutory Form Power of Attorney Act

72-31-201. Statutory form of power of attorney.
72-31-202 through 72-31-208. Renumbered by Code Commissioner, 1993.
72-31-209. Repealed.
72-31-210. Repealed.
72-31-211. Renumbered 72-31-232 by Code Commissioner, 1993.
72-31-212. Renumbered 72-31-233 by Code Commissioner, 1993.
72-31-213 through 72-31-216. Repealed.
72-31-217 through 72-31-221 reserved.
72-31-222. Durable power of attorney.
72-31-223. Construction of powers generally.
72-31-224. Construction of power relating to real property transactions.
72-31-225. Construction of power relating to tangible personal property transactions.
72-31-226. Construction of power relating to stock and bond transactions.
72-31-227. Construction of power relating to commodity and option transactions.
72-31-228. Construction of power relating to banking and other financial institution transactions.
72-31-229. Construction of power relating to business operating transactions.
72-31-230. Construction of power relating to insurance transactions.
72-31-231. Construction of power relating to estate, trust, and other beneficiary transactions.
72-31-232. Construction of power relating to claims and litigation.
72-31-233. Construction of power relating to personal and family maintenance.
72-31-234. Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs or from military service.
72-31-235. Construction of power relating to retirement plan transactions.
72-31-236. Construction of power relating to tax matters.
72-31-237. Existing interests — foreign interests.
72-31-238. Uniformity of application and construction.

Chapter Cross-References

Resulting and constructive trusts, Title 72, ch. 33, part 2.

Part 1

General

72-31-101. Oath in behalf of corporation acting as fiduciary. In all matters where a corporation is authorized to act as trustee, guardian, executor, administrator, or in any fiduciary capacity and an oath of office is required, it shall be competent for an officer of such corporation to take the required oath for and on behalf of his corporation, and such corporation shall thereby become amenable to the laws relating to individuals in like matters, so far as such laws may be applied to a corporation.

History: En. Sec. 1, Ch. 15, L. 1905; re-en. Sec. 7194, Rev. C. 1907; re-en. Sec. 9828, R.C.M. 1921; re-en. Sec. 9828, R.C.M. 1935; R.C.M. 1947, 93-8713.

Cross-References

Uniform Common Trust Act, Title 32, ch. 1, part 7.

72-31-102. Investment by fiduciaries in home owners' loan corporation bonds authorized. Notwithstanding any other provision of law, it shall be lawful for any executor, administrator, guardian or conservator, trustee, or other fiduciary to invest the funds or moneys in his custody or possession, eligible for investment, in bonds of the home owners' loan corporation or debentures issued by the federal housing administrator, guaranteed as to principal and interest by the United States government.

History: En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; R.C.M. 1947, 35-142(part).

72-31-103. Validation of fiduciary sales. All sales, provided no action is pending on July 1, 1973, to set aside such deed or conveyance, by trustees, executors, administrators, and guardians which previous to January 1, 1973, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's, or guardian's deed or conveyance to such purchaser and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if executed on July 1, 1973, or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent, or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator, or guardian shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 81, L. 1973; R.C.M. 1947, 91-4328.

Part 2

Statutory Form Power of Attorney Act

72-31-201. Statutory form of power of attorney. (1) The following statutory form of power of attorney is legally sufficient:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I .... (insert your name and address) appoint .... (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:
TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

.... (A) real property transactions;
.... (B) tangible personal property transactions;
.... (C) stock and bond transactions;
.... (D) commodity and option transactions;
.... (E) banking and other financial institution transactions;
.... (F) business operating transactions;
.... (G) insurance and annuity transactions;
.... (H) estate, trust, and other beneficiary transactions;
.... (I) claims and litigation;
.... (J) personal and family maintenance;
.... (K) benefits from social security, medicare, medicaid, or other governmental programs or from military service;
.... (L) retirement plan transactions;
.... (M) tax matters;
.... (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:
ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL
INSTRUCTIONS LIMITING OR EXTENDING
THE POWERS GRANTED TO YOUR AGENT.

....
....
....
....
....
....
....

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

..... This power of attorney revokes all previous powers of attorney signed by me.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU.

IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

..... This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

If it becomes necessary to appoint a conservator of my estate or guardian of my person, I nominate my agent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to the agent:

1. ....
2. ....
3. ....

For purposes of this subsection, a person is considered to be incompetent if and while: (1) the person is a minor; (2) the person is an adjudicated incompetent or disabled person; (3) a conservator has been appointed to act for the person; (4) a guardian has been appointed to act for the person; or (5) the person is unable to give prompt and intelligent consideration to business matters as certified by a licensed physician.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document that expressly indicates my intent to revoke. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this .... day of ...., 19...

....
(Your Signature)

....
(Your Social Security Number)

State of ....
(County) of ....

This document was acknowledged before me on

....

(Date) by

....

(Name of Principal)

....

(Signature of Notarial Officer)

....

(Seal, if any) (Title (and Rank))

[My commission expires:...........]

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(2) A statutory power of attorney is legally sufficient under this part if the wording of the form substantially complies with subsection (1), the form is properly completed, and the signature of the principal is acknowledged.

(3) If the line in front of (N) of the form under subsection (1) is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

History: En. Sec. 1, Ch. 580, L. 1991; amd. Sec. 113, Ch. 494, L. 1993.

72-31-202 through 72-31-208. Renumbered by Code Commissioner, 1993.

Compiler's Comments

Sections Renumbered:

72-31-202.	Renumbered 72-31-224.
72-31-203.	Renumbered 72-31-225.
72-31-204.	Renumbered 72-31-226.
72-31-205.	Renumbered 72-31-228.
72-31-206.	Renumbered 72-31-229.
72-31-207.	Renumbered 72-31-230.
72-31-208.	Renumbered 72-31-231.

72-31-209. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 9, Ch. 580, L. 1991.

72-31-210. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 10, Ch. 580, L. 1991.

72-31-211. Renumbered 72-31-232 by Code Commissioner, 1993.

72-31-212. Renumbered 72-31-233 by Code Commissioner, 1993.

72-31-213 through 72-31-216. Repealed. Sec. 134, Ch. 494, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

72-31-213. En. Sec. 13, Ch. 580, L. 1991.

72-31-214. En. Sec. 14, Ch. 580, L. 1991.

72-31-215. En. Sec. 15, Ch. 580, L. 1991.

72-31-216. En. Sec. 16, Ch. 580, L. 1991.

72-31-217 through 72-31-221 reserved.

72-31-222. Durable power of attorney. A power of attorney legally sufficient under this part is durable to the extent that durable powers are permitted by other law of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent." showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

History: En. Sec. 114, Ch. 494, L. 1993.

Cross-References

Bases for civil actions, 27-1-104.

72-31-223. Construction of powers generally. By executing a statutory power of attorney with respect to a subject listed in 72-31-201(1), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent for that subject to:

(1) demand, receive, and obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(7) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(8) prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(9) reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

(10) in general, do any other lawful act with respect to the subject.

History: En. Sec. 115, Ch. 494, L. 1993.

72-31-224. Construction of power relating to real property transactions. In a statutory power of attorney, the language granting power with respect to real property transactions empowers the agent to:

(1) accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;

(2) sell, exchange, or convey, with or without covenants; quitclaim; release; surrender; mortgage; encumber; partition; consent to partitioning; subdivide; apply for zoning, rezoning, or other governmental permits; plat or consent to platting; develop; grant options concerning; lease; sublet; or otherwise dispose of an interest in real property or a right incident to real property;

(3) release, assign, satisfy, and enforce, by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is asserted;

(4) do any act of management or of conservation with respect to an interest in real property or a right incident to real property, owned or claimed to be owned by the principal, including:

(a) insuring against a casualty, liability, or loss;

(b) obtaining or regaining possession or protecting the interest or right, by litigation or otherwise;

(c) paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(d) purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

(5) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has or claims to have an interest or right;

(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization and to act with respect to them, including:

(a) selling or otherwise disposing of them;

(b) exercising or selling an option, conversion, or similar right with respect to them; and

(c) voting them in person or by proxy;

(7) change the form of title of an interest in or right incident to real property;

(8) dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest.

History: En. Sec. 2, Ch. 580, L. 1991; amd. Sec. 116, Ch. 494, L. 1993; Sec. 72-31-202, MCA 1991; redes. 72-31-224 by Code Commissioner, 1993.

Cross-References

Transfers of real property, Title 70, ch. 20.

72-31-225. Construction of power relating to tangible personal property transactions. In a statutory power of attorney, the language granting power with respect to tangible personal property transactions empowers the agent to:

(1) accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) release, assign, satisfy, or enforce, by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; and

(4) do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(a) insuring against casualty, liability, or loss;

(b) obtaining or regaining possession or protecting the property or interest, by litigation or otherwise;

(c) paying, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(d) moving from place to place;

(e) storing for hire or on gratuitous bailment; and

(f) using, altering, and making repairs or alterations.

History: En. Sec. 3, Ch. 580, L. 1991; amd. Sec. 117, Ch. 494, L. 1993; Sec. 72-31-203, MCA 1991; redes. 72-31-225 by Code Commissioner, 1993.

Cross-References

Transfers of personal property — gifts, Title 70, ch. 3.

72-31-226. Construction of power relating to stock and bond transactions. In a statutory power of attorney, the language granting power with respect to stock and bond transactions empowers the agent to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts; call and put options on stocks and stock indexes; receive certificates and other evidences of ownership with respect to securities; exercise voting rights with respect to securities in person or by proxy; enter into voting trusts; and consent to limitations on the right to vote.

History: En. Sec. 4, Ch. 580, L. 1991; amd. Sec. 118, Ch. 494, L. 1993; Sec. 72-31-204, MCA 1991; redes. 72-31-226 by Code Commissioner, 1993.

72-31-227. Construction of power relating to commodity and option transactions. In a statutory power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts; call and put options on stocks and stock indexes traded on a regulated option exchange; and establish, continue, modify, and terminate option accounts with a broker.

History: En. Sec. 119, Ch. 494, L. 1993.

72-31-228. Construction of power relating to banking and other financial institution transactions. In a statutory power of attorney, the language granting power with respect to banking and other financial institution transactions empowers the agent to:

(1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) hire a safe deposit box or space in a vault;

(4) contract to procure other services available from a financial institution as the agent considers desirable;

(5) withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;

(6) receive bank statements, vouchers, notices, and similar documents from a financial institution and to act with respect to them;

(7) enter a safe deposit box or vault and withdraw or add to the contents;

(8) borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due;

(10) receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(12) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

History: En. Sec. 5, Ch. 580, L. 1991; amd. Sec. 120, Ch. 494, L. 1993; Sec. 72-31-205, MCA 1991; redes. 72-31-228 by Code Commissioner, 1993.

Cross-References

Deposit in name of minor, 32-1-444.

72-31-229. Construction of power relating to business operating transactions. In a statutory power of attorney, the language granting power with respect to business operating transactions empowers the agent:

(1) to operate, buy, sell, enlarge, reduce, and terminate a business interest;

(2) to the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement, to:

(a) perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have under a partnership agreement, whether or not the principal is a partner;

(b) enforce the terms of a partnership agreement by litigation or otherwise; and

(c) defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership;

(3) to exercise in person or by proxy or enforce, by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character and to defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument;

(4) with respect to a business owned solely by the principal, to:

(a) continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney;

(b) determine:

(i) the location of its operation;

(ii) the nature and extent of its business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) the amount and types of insurance carried;

(v) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees;

(c) change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and

(d) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business and control and disburse the money in the operation of the business;

(5) to put additional capital into a business in which the principal has an interest;

(6) to join in a plan of reorganization, consolidation, or merger of the business;

(7) to sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable;

(8) to establish the value of a business under a buyout agreement to which the principal is a party;

(9) to prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business that are required by a governmental agency or instrumentality or that the agent considers desirable and to make related payments; and

(10) to pay, compromise, or contest taxes or assessments and to do any other act that the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

History: En. Sec. 6, Ch. 580, L. 1991; amd. Sec. 121, Ch. 494, L. 1993; Sec. 72-31-206, MCA 1991; redes. 72-31-229 by Code Commissioner, 1993.

72-31-230. Construction of power relating to insurance transactions. In a statutory power of attorney, the language granting power with respect to insurance and annuity transactions empowers the agent to:

(1) continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents and to select the amount, type of insurance or annuity, and mode of payment;

(3) pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) designate the beneficiary of the contract; however, an agent may be named a beneficiary of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent was named as a beneficiary

under a contract procured by the principal before executing the power of attorney;

(5) apply for and receive a loan on the security of the contract of insurance or annuity;

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

(9) change or convert the type of insurance contract or annuity, with respect to which the principal has or claims to have a power described in this section;

(10) change the beneficiary of a contract of insurance or annuity; however, the agent may not be designated a beneficiary except to the extent permitted by subsection (4);

(11) apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(12) collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity; and

(13) pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

History: En. Sec. 7, Ch. 580, L. 1991; amd. Sec. 122, Ch. 494, L. 1993; Sec. 72-31-207, MCA 1991; redes. 72-31-230 by Code Commissioner, 1993.

Cross-References

Insurance, Title 33.

72-31-231. Construction of power relating to estate, trust, and other beneficiary transactions. In a statutory power of attorney, the language granting power with respect to estate, trust, and other beneficiary transactions, empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled as a beneficiary to a share or payment, including to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) demand or obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund;

(3) initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(4) initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary;

(5) conserve, invest, disburse, and use anything received for an authorized purpose; and

(6) transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

History: En. Sec. 8, Ch. 580, L. 1991; amd. Sec. 123, Ch. 494, L. 1993; Sec. 72-31-208, MCA 1991; redes. 72-31-231 by Code Commissioner, 1993.

72-31-232. Construction of power relating to claims and litigation. In a statutory power of attorney, the language with respect to claims and litigation empowers the agent to:

(1) assert and prosecute before a court or administrative agency a claim, counterclaim, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae;

(3) in connection with litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) in connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation;

(5) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

(6) waive the issuance and service of process upon the principal; accept service of process; appear for the principal; designate persons upon whom process directed to the principal may be served; execute and file or deliver stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and give surety and indemnity bonds; contract and pay for the preparation and printing of records and briefs; and receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value; and

(8) pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

History: En. Sec. 11, Ch. 580, L. 1991; amd. Sec. 124, Ch. 494, L. 1993; Sec. 72-31-211, MCA 1991; redes. 72-31-232 by Code Commissioner, 1993.

72-31-233. Construction of power relating to personal and family maintenance. In a statutory power of attorney, the language granting power with respect to personal and family maintenance empowers the agent to:

(1) do the acts necessary to maintain the customary standard of living of the principal and the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract or paying the operating costs, including interest, amortization payments, repairs, and taxes, on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described in subsection (1) normal domestic help; usual vacations and usual travel expenses; and funds for shelter, clothing, food, appropriate education, and other current living costs;

(3) pay for the individuals described in subsection (1) necessary medical, dental, and surgical care, hospitalization, and custodial care;

(4) continue any provision made by the principal for the individuals described in subsection (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them;

(5) maintain or open charge accounts for the convenience of the individuals described in subsection (1) and open new accounts the agent considers desirable to accomplish a lawful purpose; and

(6) continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or continue contributions to those organizations.

History: En. Sec. 12, Ch. 580, L. 1991; amd. Sec. 125, Ch. 494, L. 1993; Sec. 72-31-212, MCA 1991; redes. 72-31-233 by Code Commissioner, 1993.

72-31-234. Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs or from military service. In a statutory power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs or from civil or military service empowers the agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in 72-31-233(1), and for shipment of their household effects;

(2) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described in this section and conserve, invest, disburse, or use anything received for a lawful purpose.

History: En. Sec. 126, Ch. 494, L. 1993.

72-31-235. Construction of power relating to retirement plan transactions. In a statutory power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to:

(1) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(2) designate beneficiaries under those plans and change existing designations;

(3) make voluntary contributions to those plans;

(4) exercise the investment powers available under any self-directed retirement plan;

(5) make "rollovers" of plan benefits into other retirement plans;

(6) if authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and

(7) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

History: En. Sec. 127, Ch. 494, L. 1993.

72-31-236. Construction of power relating to tax matters. In a statutory power of attorney, the language granting power with respect to tax matters empowers the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns; claims for refunds; requests for extension of time; petitions regarding tax matters; and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code section 2032A or any successor section), closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service and any other taxing authority.

History: En. Sec. 128, Ch. 494, L. 1993.

Cross-References

Taxation, Title 15.

72-31-237. Existing interests — foreign interests. The powers described in this part are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the power of attorney is executed in this state.

History: En. Sec. 129, Ch. 494, L. 1993.

72-31-238. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 130, Ch. 494, L. 1993.

CHAPTER 32

RESERVED

CHAPTER 33

TRUST CODE
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Chapter Cross-References

Uniform Common Trust Act, Title 32, ch. 1, part 7.

Subsidiary trust companies, Title 32, ch. 1, part 8.

Gifts and devises to estates, Title 70, ch. 1, part 7.

Uniform statutory rule against perpetuities, Title 72, ch. 2, part 10.

Part 1

General Provisions

72-33-101. Short title. Chapters 33 through 36 shall be known and may be cited as the "Trust Code".

History: **En. Sec. 1, Ch. 685, L. 1989.**

72-33-102. General rule concerning application of trust code. Except as otherwise provided by statute:

(1) After September 30, 1989, chapters 33 through 36 apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of chapters 33 through 36 would substantially interfere with the rights of the parties and other interested persons, in which case the particular provision of chapters 33 through 36 does not apply and prior law applies.

(2) After September 30, 1989, chapters 33 through 36 apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of chapters 33 through 36 would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of chapters 33 through 36 does not apply and prior law applies.

History: **En. Sec. 2, Ch. 685, L. 1989.**

72-33-103. Common law as law of state. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

History: **En. Sec. 3, Ch. 685, L. 1989.**

72-33-104. Constructive and resulting trusts not affected. Other than 72-33-216 through 72-33-220, nothing in chapters 33 through 36 affects the law relating to constructive or resulting trusts.

History: **En. Sec. 4, Ch. 685, L. 1989.**

72-33-105. Application of code to charitable trusts. Unless otherwise provided by statute, chapters 33 through 36 apply to charitable trusts that are subject to the jurisdiction of the attorney general.

History: **En. Sec. 5, Ch. 685, L. 1989.**

72-33-106. Laws affecting construction and operation of wills apply to trusts. (1) Title 72, chapter 2, part 6, and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

(2) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.

(3) For purposes of chapters 33 through 36, references in Title 72, chapter 2, part 6, and in 72-3-901 to a "testator" refer to the trustor, references to a "will" refer to a trust, references to a "devisee" refer to a trust beneficiary, and references to a "devise" refer to a trust distribution.

History: **En. Sec. 6, Ch. 685, L. 1989.**

72-33-107. Reference to statutes — amendments and additions. Whenever a reference is made to any portion of chapters 33 through 36 or to any other law, the reference applies to all amendments and additions made.

History: **En. Sec. 8, Ch. 685, L. 1989.**

72-33-108. Definitions. As used in chapters 33 through 36, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment

or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust", when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust and, unless otherwise provided in the trust instrument, a trust established in connection with bonds issued under Title 90, chapters 4 through 7. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trust company" means an entity that has qualified to engage in and conduct a trust business in this state.

(6) "Trust property" means the property held in trust.

(7) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(8) "Trustor" means the person who creates a trust.

History: En. Sec. 7, Ch. 685, L. 1989; amd. Sec. 1, Ch. 688, L. 1991; amd. Sec. 68, Ch. 18, L. 1995.

Part 2

Creation and Validity of Trusts Resulting and Constructive Trusts

Part Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31.

72-33-201. Methods of creating trust. Subject to other provisions of this chapter, a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust.

History: En. Sec. 9, Ch. 685, L. 1989.

72-33-202. Intention to create trust. A trust is created only if the trustor properly manifests an intention to create a trust.

History: **En. Sec. 10, Ch. 685, L. 1989.**

72-33-203. Trust property. (1) A trust is created only if there is trust property.

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

History: **En. Sec. 11, Ch. 685, L. 1989.**

72-33-204. Trust purpose. A trust may be created for any purpose that is not illegal or against public policy.

History: **En. Sec. 12, Ch. 685, L. 1989.**

72-33-205. Trust for indefinite or general purposes. A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

History: **En. Sec. 13, Ch. 685, L. 1989.**

Cross-References

Uniform statutory rule against perpetuities, Title 72, ch. 2, part 10.

72-33-206. Designation of beneficiary. (1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

History: **En. Sec. 14, Ch. 685, L. 1989.**

72-33-207. Designation of trust or trustee as beneficiary. (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

History: **En. Sec. 15, Ch. 685, L. 1989.**

72-33-208. Statute of frauds. A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the trustor, or by the trustor's agent if authorized in writing to do so; or

(3) by operation of law.

History: **En. Sec. 16, Ch. 685, L. 1989.**

Cross-References

What contracts must be in writing, 28-2-903.

72-33-209. Consideration. Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

History: En. Sec. 17, Ch. 685, L. 1989.

72-33-210. Exception to doctrine of merger. If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the trust is in one or more of the trustors during the lifetime of the trustors.

History: En. Sec. 18, Ch. 685, L. 1989.

72-33-211 through 72-33-215 reserved.

72-33-216. Resulting trust upon failure of trust. Where the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

History: En. Sec. 19, Ch. 685, L. 1989.

72-33-217. Resulting trust upon full performance of trust. Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

History: En. Sec. 20, Ch. 685, L. 1989.

72-33-218. Purchase money resulting trust. (1) Where a transfer of property is made to one person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid the purchase price.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) whenever the party paying the purchase price manifests an intention that no resulting trust should arise;

(b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who paid the purchase price; or

(c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

(3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that the transferee should not have the beneficial interest in the property.

History: **En. Sec. 21, Ch. 685, L. 1989.**

72-33-219. Constructive trust. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if he were permitted to retain it.

History: **En. Sec. 22, Ch. 685, L. 1989.**

Cross-References

Homicide — effect on intestate succession, wills, joint assets, life insurance, and beneficiary designations, 72-2-813.

72-33-220. Resulting trusts, constructive trusts — statute of frauds. Resulting trusts and constructive trusts are considered to arise by operation of law and are valid under 72-33-208(3).

History: **En. Sec. 23, Ch. 685, L. 1989.**

Part 3

Restrictions on Voluntary and Involuntary Transfers

72-33-301. Restraint on transfer of income. Except as provided in 72-33-305, if the trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

History: **En. Sec. 24, Ch. 685, L. 1989.**

72-33-302. Restraint on transfer of principal. (1) Except as provided in 72-33-305 and subsection (2) of this section, if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(2) After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal amount.

History: **En. Sec. 25, Ch. 685, L. 1989.**

72-33-303. Trust for support. Except as provided in 72-33-305, if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

History: **En. Sec. 26, Ch. 685, L. 1989.**

72-33-304. Transferee or creditor cannot compel trustee to exercise discretion — liability of trustee for payment to or for beneficiary. (1) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(2) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subsection does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under 72-33-301 or 72-33-302.

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

History: En. Sec. 27, Ch. 685, L. 1989.

72-33-305. Where trustor is beneficiary. (1) If the trustor is a beneficiary of a trust created by the trustor and the trustor's interest is subject to a provision restraining the voluntary or involuntary transfer of the trustor's interest, the restraint is invalid against transferees or creditors of the trustor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(2) If the trustor is the beneficiary of a trust created by the trustor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee the discretion to determine the amount of income or principal or both to be paid to or for the benefit of the trustor, a transferee or creditor of the trustor may reach the maximum amount that the trustee could pay to or for the benefit of the trustor under the trust instrument, not exceeding the amount of the trustor's proportionate contribution to the trust.

History: En. Sec. 28, Ch. 685, L. 1989.

72-33-306. Disclaimer not a transfer. A disclaimer or renunciation by a beneficiary of all or part of his interest under a trust shall not be considered a transfer under 72-33-301 or 72-33-302.

History: En. Sec. 29, Ch. 685, L. 1989.

Part 4

Modification and Termination of Trusts

72-33-401. Presumption of revocability. Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the trustor. This section applies only where the trustor is domiciled in this state when the trust is created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state governs the trust.

History: En. Sec. 30, Ch. 685, L. 1989.

72-33-402. Method of revocation by trustor. (1) A trust that is revocable by the trustor may be revoked in whole or in part by any of the following methods:

(a) by compliance with any method of revocation provided in the trust instrument; or

(b) by a writing (other than a will) signed by the trustor and delivered to the trustee during the lifetime of the trustor. If the trust instrument explicitly makes the method of revocation provided in the trust instrument the exclusive method of revocation, the trust may not be revoked pursuant to this subsection.

(2) A trust may not be revoked by an attorney-in-fact under a power of attorney unless it is expressly permitted by the trust instrument.

(3) Nothing in this section limits the authority to modify or terminate a trust pursuant to 72-33-406 or 72-33-407 in an appropriate case.

(4) The manner of revocation of a trust revocable by the trustor that was created by an instrument executed before October 1, 1989, is governed by prior law and not by this section.

History: En. Sec. 31, Ch. 685, L. 1989.

72-33-403. Power to revoke includes power to modify. Unless the trust instrument provides otherwise, if a trust is revocable by the trustor, the trustor may modify the trust by the procedure for revocation.

History: En. Sec. 32, Ch. 685, L. 1989.

72-33-404 and 72-33-405 reserved.

72-33-406. Modification or termination of irrevocable trust by all beneficiaries. (1) Except as provided in subsection (2), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(2) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in part 3.

History: En. Sec. 33, Ch. 685, L. 1989.

72-33-407. Modification or termination by trustor and all beneficiaries. (1) If the trustor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust.

(2) If any beneficiary does not consent to the modification or termination of the trust, upon petition to the court, the other beneficiaries, with the consent of the trustor, may compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent are not substantially impaired.

(3) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the trustor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

History: En. Sec. 34, Ch. 685, L. 1989.

72-33-408. Guardian ad litem. For the purposes of 72-33-406 and 72-33-407, the consent of a beneficiary who is legally incapacitated, unascertained, or unborn may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In this case the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

History: En. Sec. 35, Ch. 685, L. 1989.

Cross-References

Appointment of guardian ad litem, 25-5-301.

72-33-409. No conclusive presumption of fertility. In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to 72-33-406 or 72-33-407, the presumption of fertility is rebuttable.

History: En. Sec. 36, Ch. 685, L. 1989.

72-33-410 reserved.

72-33-411. Termination of trusts — trustee's powers on termination. (1) A trust terminates when any of the following occurs:

(a) the term of the trust expires;
(b) the trust purpose is fulfilled;
(c) the trust purpose becomes unlawful;
(d) the trust purpose becomes impossible to fulfill; or
(e) the trust is revoked.

(2) On termination of the trust, the trustee continues to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.

History: En. Sec. 37, Ch. 685, L. 1989.

72-33-412. Trust with uneconomically low principal. (1) On petition by a trustee or beneficiary, if the court determines that the fair market value of the principal of a trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion and in a manner that conforms as nearly as possible to the intention of the trustor, order any of the following:

(a) termination of the trust;
(b) modification of the trust; or
(c) appointment of a new trustee.

(2) Notwithstanding subsection (1), if the trust principal does not exceed $20,000 in value, the trustee has the power to terminate the trust.

(3) The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this section.

History: En. Sec. 38, Ch. 685, L. 1989.

72-33-413. Modification or termination. (1) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(2) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

History: En. Sec. 39, Ch. 685, L. 1989.

72-33-414. Disposition of property upon termination. At the termination of a trust, the trust property shall be disposed of as follows:

(1) In the case of a trust that is revoked by the trustor, as directed by the trustor.

(2) In the case of a trust that is terminated by the consent of the trustor and all beneficiaries, as agreed by the trustor and all beneficiaries.

(3) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the trustor as expressed in the trust instrument. If a trust is terminated by the trustee pursuant to 72-33-412(2), the trust property shall be distributed as determined by the trustee pursuant to this subsection.

History: En. Sec. 40, Ch. 685, L. 1989.

72-33-415. Combination of similar trusts. If the terms of two or more trusts are substantially similar, on petition by a trustee or beneficiary, the court, for good cause shown, may combine the trusts if the court determines that administration as a single trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

History: En. Sec. 41, Ch. 685, L. 1989.

72-33-416. Division of trusts. On petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

History: En. Sec. 42, Ch. 685, L. 1989.

Part 5
Charitable Trusts

72-33-501. Charitable trust. A charitable trust, or the charitable portion of a trust, subjects the trustee to equitable duties to deal with the trust property for a charitable purpose.

History: En. Sec. 43, Ch. 685, L. 1989.

72-33-502. Charitable purposes. Charitable purposes include:

(1) the relief of poverty;
(2) the advancement of education;
(3) the advancement of religion;
(4) the promotion of health;
(5) governmental or municipal purposes; or

(6) other purposes the accomplishment of which are beneficial to the community.

History: **En. Sec. 44, Ch. 685, L. 1989.**

72-33-503. Enforcement of a charitable trust. The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust can maintain a suit for the enforcement of a charitable trust, but not persons who have no special interest or the trustor or his heirs or personal representative.

History: **En. Sec. 45, Ch. 685, L. 1989.**

72-33-504. Cy pres doctrine. If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the trustor manifested a general intention to devote the property to charitable purposes, the trust need not fail. The court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the trustor.

History: **En. Sec. 46, Ch. 685, L. 1989.**

Part 6
Trustees

72-33-601. Acceptance of trust by trustee. (1) The person named as trustee may accept the trust, or a modification of the trust, by one of the following methods:

(a) signing the trust instrument or the trust instrument as modified, or signing a separate written acceptance; or

(b) knowingly exercising powers or performing duties under the trust instrument or the trust instrument as modified, except as provided in subsection (2).

(2) In a case where there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the trust or a modification of the trust, if within reasonable time after acting the person delivers a written rejection of the trust or the modification of the trust to the trustor or, if the trustor is dead or incompetent, to a beneficiary. This subsection does not impose a duty on the person named as trustee to act.

History: **En. Sec. 47, Ch. 685, L. 1989.**

72-33-602. Rejection of trust — nonliability of person who rejects trust. (1) A person named as trustee may in writing reject the trust or a modification of the trust.

(2) If the person named as trustee does not accept the trust or a modification of the trust by a method provided in 72-33-601(1) within a reasonable time after learning of being named as trustee or of the modification, the person has rejected the trust or the modification.

(3) A person named as trustee who rejects the trust or a modification of the trust is not liable with respect to the rejected trust or modification.

History: **En. Sec. 48, Ch. 685, L. 1989.**

72-33-603. Trustee's bond. (1) A trustee is not required to give a bond to secure performance of the trustee's duties, unless either of the following circumstances occurs:

(a) A bond is required by the trust instrument.

(b) Notwithstanding a waiver of bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries.

(2) Notwithstanding subsection (1)(a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, permit the substitution of another bond with the same or different sureties, or accept another form of security.

(3) If a bond is required, it shall be filed or served, in the amount, and with sureties and liabilities as provided in the trust instrument or as ordered by the court.

(4) Except as otherwise provided in the trust instrument or ordered by the court, the cost of the bond shall be charged against the trust.

(5) A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument.

History: En. Sec. 49, Ch. 685, L. 1989.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

72-33-604. Certificate of trustee. On application by the trustee, the clerk of the district court shall issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the court file shows the incumbency of the trustee.

History: En. Sec. 50, Ch. 685, L. 1989.

72-33-605 through 72-33-610 reserved.

72-33-611. Cotrustees. (1) Unless otherwise provided in the trust instrument, a power vested in two trustees may only be exercised by their unanimous action.

(2) Unless otherwise provided in the trust instrument, a power vested in three or more trustees may be exercised by a majority of such trustees.

History: En. Sec. 51, Ch. 685, L. 1989.

Cross-References

Duty with respect to cotrustees, 72-34-116.

Liability of dissenting cotrustee to third persons, 72-36-104.

72-33-612. Vacancy in office of cotrustee. Unless otherwise provided in the trust instrument, if a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act for the trust as if they are the only trustees.

History: En. Sec. 52, Ch. 685, L. 1989.

72-33-613. Temporary incapacity of cotrustee. Unless otherwise provided in the trust instrument, if a cotrustee is unavailable to perform the duties of the cotrustee because of absence, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act for the trust when necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property as if they are the only trustees.

History: En. Sec. 53, Ch. 685, L. 1989.

72-33-614 and 72-33-615 reserved.

72-33-616. Resignation of the trustee. (1) A trustee who has accepted the trust may resign only by one of the following methods:

(a) as provided in the trust instrument;

(b) in the case of a revocable trust, with the consent of the person holding the power to revoke the trust;

(c) in the case of a trust that is not revocable, with the consent of only all of the adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought; or

(d) pursuant to a court order obtained as provided in subsection (2).

(2) On petition by the trustee, the court shall accept the trustee's resignation. The court may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

History: En. Sec. 54, Ch. 685, L. 1989.

72-33-617. Liability upon resignation. The liability for acts or omissions of a resigning trustee or of the sureties on the trustee's bond, if any, is not released or affected in any manner by the trustee's resignation.

History: En. Sec. 55, Ch. 685, L. 1989.

72-33-618. Removal of a trustee. (1) A trustee may be removed in accordance with the trust instrument or by the court on its own motion or on petition of a cotrustee or beneficiary.

(2) The grounds for removal of a trustee by the court include the following:

(a) if the trustee has committed a breach of the trust;

(b) if the trustee is insolvent or otherwise unfit to administer the trust;

(c) if hostility or lack of cooperation among cotrustees impairs the administration of the trust;

(d) if the trustee fails or declines to act; or

(e) for other good cause.

(3) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court considers necessary.

History: En. Sec. 56, Ch. 685, L. 1989.

72-33-619. Vacancy in office of trustee. There is a vacancy in the office of trustee in any of the following circumstances:

(1) The person named as trustee rejects the trust.

(2) The person named as trustee cannot be identified or does not exist.

(3) The trustee resigns or is removed.

(4) The trustee dies.

(5) A conservator or guardian of an individual trustee is appointed.

(6) A certificate of incorporation of a trust company is revoked or its powers are suspended, if the revocation or suspension is to be in effect for a period of 30 days or more.

(7) A receiver is appointed for a trust company if the appointment is not vacated within a period of 30 days.

History: En. Sec. 57, Ch. 685, L. 1989.

72-33-620. Delivery of property by former trustee upon occurrence of vacancy. When a vacancy has occurred in the office of trustee, the former trustee who holds property of the trust shall deliver the trust property to the successor trustee or a person appointed by the court to receive the property and remains responsible for the trust property until it is delivered. A trustee who has resigned or is removed has the powers reasonably necessary under the circumstances to preserve the trust property until it is delivered to the successor trustee and to perform actions necessary to complete the resigning or removed trustee's administration of the trust.

History: En. Sec. 58, Ch. 685, L. 1989.

72-33-621. Appointment of trustee to fill vacancy. (1) If the trust has no trustee or if the trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.

(2) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(3) If the vacancy in the office of trustee is not filled as provided in subsection (2), on petition of a cotrustee or beneficiary the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

History: En. Sec. 59, Ch. 685, L. 1989.

72-33-622. Capacity of trustee. (1) The trustee must have the legal capacity to take, hold, and transfer the trust property. The trustee may be a natural person or a corporation or trust company. If the trustee is a corporation, it must be qualified to act as a trustee in this state.

(2) A beneficiary of a trust may be the trustee of the trust.

(3) The trustor of a trust may be the trustee of the trust.

History: En. Sec. 60, Ch. 685, L. 1989.

72-33-623 through 72-33-625 reserved.

72-33-626. Trustee's compensation as provided in trust instrument — different compensation. (1) Subject to subsection (2), if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

(2) Upon proper showing, the court may fix or allow greater or lesser compensation than could be allowed under the terms of the trust in any of the following circumstances:

(a) whenever the duties of the trustee are substantially different from those contemplated when the trust was created;

(b) whenever the compensation in accordance with the terms of the trust would be inequitable or unreasonably low or high; or

(c) in extraordinary circumstances calling for equitable relief.

(3) An order fixing or allowing greater or lesser compensation under subsection (2) applies only prospectively to actions taken in administration of the trust after the order is made.

History: **En. Sec. 61, Ch. 685, L. 1989.**

72-33-627. Trustee's compensation where trust silent. If the trust instrument does not specify the trustee's compensation, the trustee is entitled to reasonable compensation.

History: **En. Sec. 62, Ch. 685, L. 1989.**

72-33-628. Compensation for services rendered in making temporary investments. In addition to other compensation to which the trustee is entitled, the trustee is entitled to make a reasonable charge for services rendered in making temporary investments.

History: **En. Sec. 63, Ch. 685, L. 1989.**

72-33-629. Court determination of prospective compensation. The court may fix an amount of periodic compensation under 72-33-626 and 72-33-627 to continue for as long as the court determines is proper.

History: **En. Sec. 64, Ch. 685, L. 1989.**

72-33-630. Compensation of cotrustees. Unless the trust instrument otherwise provides or the trustees otherwise agree, if the trust has two or more trustees, the compensation shall be apportioned among the cotrustees according to the services rendered by them.

History: **En. Sec. 65, Ch. 685, L. 1989.**

72-33-631. Repayment of trustee for expenditures. A trustee is entitled to the repayment out of the trust property for the following:

(1) expenditures that were properly incurred in the administration of the trust; and

(2) to the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

History: **En. Sec. 66, Ch. 685, L. 1989.**

72-33-632. Trustee's lien. The trustee has an equitable lien on the trust property as against the beneficiary in the amount of advances, with any interest, made for the protection of the trust, and for expenses, losses, and liabilities sustained in the administration of the trust or because of ownership or control of any trust property.

History: **En. Sec. 67, Ch. 685, L. 1989.**

Part 7

Beneficiaries

72-33-701. Limits on rights of beneficiary of revocable trust. Except to the extent that the trust instrument otherwise provides or when the joint action of the trustor and all beneficiaries is required, during the time that the person holding the power to revoke the trust is competent:

(1) the person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under chapters 33 through 36;

(2) the duties of the trustee are owed to the person holding the power to revoke.

History: **En. Sec. 68, Ch. 685, L. 1989; amd. Sec. 34, Ch. 592, L. 1995.**

72-33-702. Consent by beneficiary of revocable trust. (1) In any case where the consent of a beneficiary may be given or is required to be given before an action may be taken, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, the person holding the power to revoke, and not the beneficiary, has the power to consent or withhold consent.

(2) This section does not apply where the joint consent of the trustor and all beneficiaries is required by statute.

History: En. Sec. 69, Ch. 685, L. 1989.

72-33-703. Notice to beneficiary of revocable trust. Notwithstanding any other statute, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, a notice that is to be given to a beneficiary shall be given to the person holding the power to revoke and not to the beneficiary.

History: En. Sec. 70, Ch. 685, L. 1989.

72-33-704. Rights of holder of power of appointment or withdrawal. The holder of a presently exercisable general power of appointment or power to withdraw property from the trust has the rights of a trustor provided by 72-33-701 through 72-33-703, inclusive, to the extent of the holder's power over the trust property.

History: En. Sec. 71, Ch. 685, L. 1989.

72-33-705. Notice in case involving future interest of beneficiary. (1) Subject to subsections (2) and (3), it is sufficient compliance with a requirement in chapters 33 through 36 that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:

(a) Whenever an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if the event had happened immediately before the commencement of the proceedings.

(b) Whenever an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living persons, notice shall be given to the living person.

(c) Whenever an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.

(2) If a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under subsection (1), notice shall also be given to persons not otherwise entitled to notice under subsection (1) with respect to whom the conflict of interest exists.

(3) Nothing in this section affects any of the following:

(a) requirements for notice to:

(i) a person who has requested special notice;
(ii) a person who has filed notice of appearance; or
(iii) a particular person or entity required by statute to be given notice; or
(b) availability of a guardian ad litem pursuant to 72-35-313.

History: **En. Sec. 72, Ch. 685, L. 1989.**

CHAPTER 34

TRUST ADMINISTRATION

Part 1 — Duties of Trustees

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Part 5 — Liability of Trustees to Beneficiaries

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Chapter Cross-References

Uniform Common Trust Act, Title 32, ch. 1, part 7.

Subsidiary trust companies, Title 32, ch. 1, part 8.

Part 1
Duties of Trustees

72-34-101. Duty to administer trust. On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to chapters 33 through 36.

History: **En. Sec. 73, Ch. 685, L. 1989.**

72-34-102. Duties of trustee of revocable trust. (1) Except as provided in subsection (2), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time:

(a) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given; or

(b) by the person to whom the trustor delegates the right to direct the trustee.

(2) If a written direction given under subsection (1) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

History: **En. Sec. 74, Ch. 685, L. 1989.**

72-34-103. Duty of loyalty. (1) The trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(2) It is not a violation of the duty provided in subsection (1) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(a) the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts; and

(b) the trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

History: **En. Sec. 75, Ch. 685, L. 1989.**

72-34-104. Duty to deal impartially with beneficiaries. If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

History: **En. Sec. 76, Ch. 685, L. 1989.**

72-34-105. Duty to avoid conflict of interest. (1) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(2) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may allow the trustee to be reimbursed from trust property the amount that the trustee paid for the claim.

(3) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the burden of proof. This subsection does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee.

History: En. Sec. 77, Ch. 685, L. 1989.

72-34-106. Duty not to undertake adverse trust. The trustee of one trust has a duty not to knowingly become a trustee of another trust adverse in its nature to the interest of the beneficiary of the first trust, and a duty to eliminate the conflict or resign as trustee when the conflict is discovered.

History: En. Sec. 78, Ch. 685, L. 1989.

72-34-107. Duty to take control of and preserve trust property. The trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

History: En. Sec. 79, Ch. 685, L. 1989.

72-34-108. Duty to make trust property productive. The trustee has a duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust.

History: En. Sec. 80, Ch. 685, L. 1989.

72-34-109. Duty to dispose of improper investments. (1) Except as provided in subsection (2), the trustee has a duty within a reasonable time to dispose of any part of the trust property included in the trust at the time of its creation, or later acquired by or added to the trust, that would not be a proper investment for the trustee to make.

(2) Unless the trust instrument expressly provides otherwise, the trustee may, without liability, continue to hold property included in the trust at its creation or later added to the trust or acquired pursuant to proper authority, if retention is in the best interests of the trust or in furtherance of the purposes of the trust.

History: En. Sec. 81, Ch. 685, L. 1989.

72-34-110. Duty to keep trust property separate and identified. The trustee has a duty to do the following:

(1) to keep the trust property separate from other property not subject to the trust; and

(2) to see that the trust property is designated as property of the trust.

History: En. Sec. 82, Ch. 685, L. 1989.

72-34-111. Duty to enforce claims. The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property.

History: En. Sec. 83, Ch. 685, L. 1989.

72-34-112. Duty to defend actions. The trustee has a duty to take reasonable steps to defend actions that may result in a loss to the trust.

History: En. Sec. 84, Ch. 685, L. 1989.

72-34-113. Duty not to delegate. (1) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(2) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

History: En. Sec. 85, Ch. 685, L. 1989.

72-34-114. Duty to use ordinary skill and prudence. (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

(2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(3) The trustor may expand or restrict the standards provided in subsections (1) and (2) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

History: En. Sec. 89, Ch. 685, L. 1989.

72-34-115. Duty to use special skills. (1) The trustee has a duty to apply the full extent of the trustee's skills.

(2) If the trustor, in selecting the trustee, has relied on the trustee's representation of having special skills, the trustee is held to the standard of the skills represented.

History: En. Sec. 87, Ch. 685, L. 1989.

72-34-116. Duty with respect to cotrustees. If a trust has more than one trustee, each trustee has a duty to do the following:

(1) to participate in the administration of the trust; and

(2) to take reasonable steps to prevent a cotrustee from committing a breach of trust or to compel a cotrustee to redress a breach of trust.

History: En. Sec. 86, Ch. 685, L. 1989.

Cross-References

Cotrustees, 72-33-611.

Liability of dissenting cotrustee to third persons, 72-36-104.

72-34-117. Certain actions and transactions not violations of duties. (1) The following actions or transactions do not violate the duties provided in 72-34-103 or 72-34-105:

(a) the provision of services for reasonable compensation by a regulated financial institution or its affiliates in the ordinary course of business either to a trust for which it or an affiliate also acts as trustee or to a person dealing with the trust;

(b) the purchase or sale of investment securities between a regulated financial institution or its affiliates in the ordinary course of business or to a trust for which it or an affiliate also acts as trustee.

(2) Subsection (1) does not affect the duty to use ordinary skill and prudence as provided in 72-34-114.

(3) For the purposes of this section, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

History: En. Sec. 88, Ch. 685, L. 1989; amd. Sec. 7, Ch. 279, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 279 inserted (1) regarding actions or transactions that do not violate statutory duties; in (1)(a), before "compensation", inserted "reasonable", in middle inserted "or an affiliate", and at end, after "trust", deleted "is not a violation of the duty provided in 72-34-103 or 72-34-105"; inserted (1)(b) establishing that the purchase or sale of investment securities between a regulated financial institution or its affiliates is not a violation; inserted (2) providing that subsection (1) does not affect duty to use ordinary skill and prudence; and made minor changes in style.

72-34-118. Standard of care not affected by compensation. A trustee's standard of care and performance in administering the trust is not affected by whether or not the trustee receives any compensation.

History: En. Sec. 90, Ch. 685, L. 1989.

72-34-119 and 72-34-120 reserved.

72-34-121. Interpretation of trust terms concerning legal investments. If a trust created before, on, or after October 1, 1989, refers to "investments permissible by law for investment of trust funds", "authorized by law for investment of trust funds", "legal investments", "authorized investments", or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital", or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by 72-34-114 and authorizing any investment permitted under part 3.

History: En. Sec. 91, Ch. 685, L. 1989.

72-34-122 and 72-34-123 reserved.

72-34-124. Trustee's general duty to report information to beneficiaries. The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.

History: En. Sec. 92, Ch. 685, L. 1989.

72-34-125. Duty to report information about trust on request. Except as provided in 72-34-127, on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust that describe or affect the beneficiary's interest.

History: En. Sec. 93, Ch. 685, L. 1989.

72-34-126. Duty to provide annual statement to income beneficiaries. Except as provided in 72-34-127, the trustee shall annually mail each income beneficiary an itemized statement of all current receipts and disbursements of both principal and income.

History: En. Sec. 94, Ch. 685, L. 1989.

72-34-127. Exceptions to duty to report information and to provide annual statement. The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in 72-33-701;

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to 72-35-301.

(4) if the beneficiary and the trustee are the same person.

History: En. Sec. 95, Ch. 685, L. 1989.

72-34-128. Permissive accounts. At any time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to 72-34-511, the account must contain the following information:

(1) a statement of receipts and disbursements of principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to 72-35-301 to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

History: En. Sec. 96, Ch. 685, L. 1989.

72-34-129. Discretionary powers to be exercised reasonably. Except as provided in 72-34-130, a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

History: En. Sec. 97, Ch. 685, L. 1989.

72-34-130. Standard for exercise of "absolute", "sole", or "uncontrolled" powers. (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

History: En. Sec. 98, Ch. 685, L. 1989.

Part 2

Duties of Trustees of Private Foundations, Charitable Trusts, and Split-Interest Trusts

72-34-201. Definitions. As used in this part, the following definitions apply:

(1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue Code.

(2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue Code.

(3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal Revenue Code.

History: En. Sec. 99, Ch. 685, L. 1989.

72-34-202. Distribution under charitable trust or private foundation. During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

History: En. Sec. 100, Ch. 685, L. 1989.

72-34-203. Restrictions on trustees under charitable trust, private foundations, or split-interest trust. During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in such manner as to subject the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

History: En. Sec. 101, Ch. 685, L. 1989.

72-34-204. Exceptions applicable to split-interest trusts. With respect to split-interest trusts:

(1) 72-34-203(2) and (3) do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

(2) 72-34-203 does not apply with respect to any of the following:

(a) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

(b) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if the amounts are segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable; or

(c) any amounts irrevocably transferred in trust before May 27, 1969.

History: En. Sec. 102, Ch. 685, L. 1989.

72-34-205. Incorporation in trust instruments. The provisions of 72-34-202 through 72-34-204 shall be considered to be contained in the instrument creating every trust to which this part applies. Any provision of the instrument inconsistent with or contrary to this part is without effect.

History: En. Sec. 103, Ch. 685, L. 1989.

72-34-206. Proceedings. (1) A proceeding contemplated by section 101(l)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to 72-35-301 by the organization involved. All specifically named beneficiaries of the organization and the attorney general shall be parties to the proceedings. Notwithstanding 72-35-101, this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section shall be recorded in a similar manner within 10 days from the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings shall be similarly recorded.

History: En. Sec. 104, Ch. 685, L. 1989.

Compiler's Comments

Federal Law: For the text of section 101(l)(3) of the Tax Reform Act of 1969, relating to judicial proceedings by a private foundation that are necessary to reform or excuse compliance with its governing instrument to comply with 26 U.S.C. 4942, see the note following 26 U.S.C. 4940.

Part 3

Powers of Trustees

72-34-301. General powers of trustee. A trustee has the following powers without the need to obtain court authorization:

(1) the powers conferred by the trust instrument;

(2) except as limited in the trust instrument, the powers conferred by statute; and

(3) except as limited in the trust instrument, the power to perform any act that a trustee would perform for the purposes of the trust under the standard of care provided in 72-34-114.

History: **En. Sec. 105, Ch. 685, L. 1989.**

72-34-302. Power of court to relieve trustee from restrictions on powers. Sections 72-34-306 through 72-34-311, 72-34-316 through 72-34-323, 72-34-326 through 72-34-332, and 72-34-336 through 72-34-343 do not affect the power of a court to relieve a trustee from restrictions on the exercise of powers under the trust instrument.

History: **En. Sec. 106, Ch. 685, L. 1989.**

72-34-303. Exercise of powers subject to trustee's duties. The grant of a power to a trustee, whether by the trust instrument, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of a power by a trustee is subject to the trustee's fiduciary duties.

History: **En. Sec. 107, Ch. 685, L. 1989.**

72-34-304. Application of rules governing trustees' powers. An instrument that incorporates the powers provided in former Title 72, chapter 21, ("Montana Trustees' Powers Act") shall be considered to refer to the powers provided in 72-34-306 through 72-34-311, 72-34-316 through 72-34-323, 72-34-326 through 72-34-332, and 72-34-336 through 72-34-343. For this purpose, the trustee's powers under former Title 72, chapter 21, ("Montana Trustees' Powers Act") are not diminished and the trustee is not required to obtain court approval for exercise of a power for which court approval was not required by former law.

History: **En. Sec. 108, Ch. 685, L. 1989.**

72-34-305 reserved.

72-34-306. Collecting and holding property. The trustee has the power to collect, hold, and retain trust property received from a trustor or any other person until, in the judgment of the trustee, disposition of the property should be made. The property may be retained even though it includes property in which the trustee is personally interested.

History: **En. Sec. 109, Ch. 685, L. 1989.**

72-34-307. Receiving additions to trust. The trustee has the power to accept additions to the property of the trust from a trustor or any other person.

History: **En. Sec. 110, Ch. 685, L. 1989.**

72-34-308. Participation in business — change in form of business. The trustee has the power to continue to participate in the operation of any business or other enterprise that is part of the trust property and may effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

History: **En. Sec. 111, Ch. 685, L. 1989.**

72-34-309. Investments. The trustee has the power to invest, including making those investments provided for in 32-1-420, in any kind of property, whether real, personal, or mixed.

History: **En. Sec. 112, Ch. 685, L. 1989; amd. Sec. 2, Ch. 289, L. 1993.**

Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

72-34-310. Investments in obligations of United States government. In the absence of an express provision to the contrary in a trust instrument, whenever the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of securities or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, or an investment vehicle authorized for the collective investment of trust funds pursuant to section 9.18 of Title 12 of the Code of Federal Regulations, if:

(1) the portfolio of the investment company, investment trust, or investment vehicle is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(2) the investment company, investment trust, or investment vehicle takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

History: En. Sec. 113, Ch. 685, L. 1989.

72-34-311. Deposits. (1) The trustee has the power to deposit trust funds at reasonable interest with any of the following:

(a) an insured commercial or savings bank;

(b) an insured building and loan association; or

(c) an insured credit union.

(2) A trustee may deposit trust funds as described in subsection (1) in a financial institution operated by, or that is an affiliate of, the trustee. For the purpose of this subsection, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

(3) This section does not limit the power of a trustee in a proper case to deposit trust funds in institutions as described in subsection (1) that are subject to notice or other conditions respecting withdrawal prescribed by law or governmental regulation.

(4) Nothing in this section prevents the trustee from holding an amount of trust property reasonably necessary for the orderly administration of the trust in the form of cash or in a checking account without interest.

History: En. Sec. 114, Ch. 685, L. 1989.

72-34-312 through 72-34-315 reserved.

72-34-316. Acquisition and disposition of property. The trustee has the power to acquire or dispose of property, for cash or on credit, at public or private sale, or by exchange.

History: En. Sec. 115, Ch. 685, L. 1989.

72-34-317. Management of property. The trustee has the power to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property or any interest therein.

History: En. Sec. 116, Ch. 685, L. 1989.

72-34-318. Encumbrances. The trustee has the power to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee.

History: En. Sec. 117, Ch. 685, L. 1989.

72-34-319. Repairs and alterations of property. The trustee has the power to do any of the following:

(1) make ordinary or extraordinary repairs, alterations, improvements in buildings or other trust property;

(2) demolish any improvements; or

(3) raze existing or erect new party walls or buildings.

History: En. Sec. 118, Ch. 685, L. 1989.

72-34-320. Development of land. The trustee has the power to do any of the following:

(1) subdivide or develop land;

(2) dedicate land to public use;

(3) make or obtain the vacation of plats and adjust boundaries;

(4) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(5) dedicate easements to public use without consideration.

History: En. Sec. 119, Ch. 685, L. 1989.

72-34-321. Leases. The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

History: En. Sec. 120, Ch. 685, L. 1989.

72-34-322. Mineral leases. The trustee has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals, and to enter into a community oil lease or a pooling or utilization agreement, and for a term within or extending beyond the term of the trust.

History: En. Sec. 121, Ch. 685, L. 1989.

72-34-323. Options. The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

History: En. Sec. 122, Ch. 685, L. 1989.

72-34-324 and 72-34-325 reserved.

72-34-326. Voting rights with respect to corporate shares, memberships, or property. With respect to any shares of stock of a domestic or foreign corporation, any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(1) vote in person and give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(2) waive notice of a meeting or give consent to the holding of a meeting; or

(3) authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

History: En. Sec. 123, Ch. 685, L. 1989.

72-34-327. Payment of calls and assessments. The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

History: En. Sec. 124, Ch. 685, L. 1989.

72-34-328. Stock subscriptions and conversions. The trustee has the power to sell or exercise stock subscription or conversion rights.

History: En. Sec. 125, Ch. 685, L. 1989.

72-34-329. Consent to change in form of business — voting trusts. The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit securities with and transfer title and delegate discretions to any protective or other committee as the trustee may consider advisable.

History: En. Sec. 126, Ch. 685, L. 1989.

72-34-330. Holding securities in name of nominee. The trustee has the power to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held.

History: En. Sec. 127, Ch. 685, L. 1989.

72-34-331. Insurance. The trustee has the power to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons.

History: En. Sec. 128, Ch. 685, L. 1989.

72-34-332. Borrowing money. The trustee has the power to borrow money for any trust purpose to be repaid from trust property.

History: En. Sec. 129, Ch. 685, L. 1989.

72-34-333 through 72-34-335 reserved.

72-34-336. Payment and settlement of claims. The trustee has the power to do any of the following:

(1) pay or contest any claim;

(2) settle a claim by or against the trust by compromise, arbitration, or otherwise; or

(3) release, in whole or in part, any claim belonging to the trust.

History: En. Sec. 130, Ch. 685, L. 1989.

72-34-337. Payment of taxes, trustee's compensation, and other expenses. The trustee has the power to pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

History: En. Sec. 131, Ch. 685, L. 1989.

72-34-338. Loans to beneficiary. The trustee has the following powers:

(1) to make loans out of trust property to the beneficiary on terms and conditions that the trustee determines are fair and reasonable under the circumstances; and

(2) to guarantee loans to the beneficiary by encumbrances on trust property.

History: En. Sec. 132, Ch. 685, L. 1989.

72-34-339. Distribution to beneficiaries under legal disability. The trustee has the power to pay any sum distributable to a beneficiary, without regard to whether the beneficiary is under a legal disability, by paying the sum to the beneficiary or by paying the sum to another person for the use or benefit of the beneficiary.

History: **En. Sec. 133, Ch. 685, L. 1989.**

72-34-340. Nature and value of distributions. The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non-pro rata.

History: **En. Sec. 134, Ch. 685, L. 1989.**

72-34-341. Hiring persons. The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisors, or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

History: **En. Sec. 135, Ch. 685, L. 1989.**

72-34-342. Execution and delivery of instruments. The trustee has the power to execute and deliver all instruments which are needed to accomplish or facilitate the exercise of the powers vested in the trustee.

History: **En. Sec. 136, Ch. 685, L. 1989.**

72-34-343. Actions and proceedings. The trustee has the power to prosecute or defend actions, claims, or proceedings for the protection of trust property and of the trustee in the performance of the trustee's duties.

History: **En. Sec. 137, Ch. 685, L. 1989.**

Part 4

Revised Uniform Principal and Income Act

72-34-401. Short title. This part may be cited as the "Revised Uniform Principal and Income Act".

History: **En. Sec. 138, Ch. 685, L. 1989.**

72-34-402. Definitions. As used in this part, the following definitions apply:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the adjusted basis for federal income tax purposes.

(3) "Remainder beneficiary" means the person entitled to principal, including income which has been accumulated and added to principal.

(4) "Trustee" means the original trustee, any succeeding or added trustee, and the personal representative of a decedent's estate whenever a provision of this part is applicable to the estate.

History: **En. Sec. 139, Ch. 685, L. 1989.**

72-34-403. Duty of trustee as to receipts and expenditures. (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remainder beneficiaries. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each in any of the following ways:

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this part;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this part; or

(c) if neither subsection (1)(a) nor subsection (1)(b) is applicable, in accordance with the standard of care provided in 72-34-114 and with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal.

(2) If the trust gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to a provision of this part.

History: En. Sec. 140, Ch. 685, L. 1989.

72-34-404. Income — principal — charges. (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as consideration for the prepayment of principal except as provided in 72-34-408 on bond premium and bond discount;

(c) income earned during administration of a decedent's estate as provided in 72-34-406;

(d) corporate distributions as provided in 72-34-407;

(e) accrued increment on bonds or other obligations issued at discount as provided in 72-34-408;

(f) receipts from business and farming operations as provided in 72-34-409;

(g) receipts from disposition of natural resources as provided in 72-34-410 and 72-34-411; or

(h) receipts from other principal subject to depletion as provided in 72-34-412.

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary, while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:

(a) consideration received by the trustee on the sale or other transfer of principal or a repayment of a loan or as a refund or replacement or change in the form of principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in 72-34-407;

(e) receipts from the disposition of corporate securities as provided in 72-34-408;

(f) royalties and other receipts from disposition of natural resources as provided in 72-34-410 and 72-34-411;

(g) receipts from other principal subject to depletion as provided in 72-34-412;

(h) any profit resulting from any change in the form of principal; or

(i) any allowances for depreciation established under 72-34-416(1)(b).

(3) After determining income and principal in accordance with the terms of the trust instrument or of this part, the trustee shall charge to income or principal the expenses and other charges as provided in 72-34-416.

History: **En. Sec. 141, Ch. 685, L. 1989.**

72-34-405. When right to income arises — apportionment of income. (1) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the death of the person even though there is an intervening period of administration of the person's estate.

(2) Upon property becoming subject to a trust by reason of a person's death:

(a) Receipts due but not paid at the date of death of the person are principal.

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(3) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his or her estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of termination; and

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

History: **En. Sec. 142, Ch. 685, L. 1989.**

72-34-406. Income earned during administration of decedent's estate. (1) Unless the will otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the property of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under chapters 33 and 34 and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed property of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

History: En. Sec. 143, Ch. 685, L. 1989.

72-34-407. Corporate distributions. (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to any of the following:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1) through (3), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this part concerning the source or character of dividends or distributions of corporate assets.

History: En. Sec. 144, Ch. 685, L. 1989.

72-34-408. Bond premium and discount. (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

History: En. Sec. 145, Ch. 685, L. 1989.

72-34-409. Business and farming operations. (1) If a trustee uses any part of the principal in the continuance of a business of which the trustor was a sole proprietor or a partner, the net profits of the business, computed in accordance with recognized methods of accounting for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Recognized methods of accounting for a comparable business shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

History: En. Sec. 146, Ch. 685, L. 1989.

72-34-410. Disposition of natural resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsections (1)(a) and (1)(b) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of:

(i) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes; or

(ii) 50% of the net receipts remaining after payment of expenses, direct and indirect, computed without allowance for depletion.

(2) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

History: En. Sec. 147, Ch. 685, L. 1989.

72-34-411. Timber. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with 72-34-403(1)(c).

History: En. Sec. 148, Ch. 685, L. 1989.

72-34-412. Other property subject to depletion. Except as provided in 72-34-410 and 72-34-411, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of 5% per year of its inventory value, are income, and the balance is principal.

History: En. Sec. 149, Ch. 685, L. 1989.

72-34-413 through 72-34-415 reserved.

72-34-416. Charges against income and principal. (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including:

(i) regularly recurring taxes assessed against any portion of the principal;

(ii) water rates;

(iii) premiums on insurance taken upon the interests of the income beneficiary, remainder beneficiary, or trustee;

(iv) interest paid by the trustee; and

(v) ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation on that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on July 1, 1983, for which the trustee was not then making an allowance for depreciation;

(c) not less than one-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney fees, and fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) not less than one-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, unless the court directs otherwise; and

(f) any tax levied upon receipts defined as income under part 4 or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may, by means of reserves or other reasonable means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) The following charges shall be made against principal:

(a) (i) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e);

(ii) special compensation of trustees;

(iii) expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and

(iv) trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including:

(i) the costs of investing and reinvesting principal;

(ii) the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal;

(iii) expenses for preparation of property for rental or sale; and

(iv) unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by 72-34-409 and by subsection (1)(b) of this section;

(d) any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority; and

(e) if an estate or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainder beneficiary have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under 72-34-405.

History: En. Sec. 150, Ch. 685, L. 1989.

Part 5

Liability of Trustees to Beneficiaries

72-34-501. Breach of trust. A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

History: En. Sec. 151, Ch. 685, L. 1989.

72-34-502. Trustee's liability to beneficiary for acts of agent. (1) Except as provided in subsection (2), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(2) The trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:

(a) whenever the trustee has the power to direct the act of the agent;

(b) whenever the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate;

(c) whenever the trustee does not use reasonable care in the selection of the agent or the retention of the agent selected by the trustee;

(d) whenever the trustee does not exercise proper supervision over the agent's conduct in a case where the trustee has the power to supervise the agent;

(e) whenever the trustee conceals the act of the agent; or

(f) whenever the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(3) The liability of a trustee for acts or omissions of agents that occurred before October 1, 1989, is governed by prior law and not by this section.

History: En. Sec. 152, Ch. 685, L. 1989.

72-34-503. Trustee's liability to beneficiary for acts of cotrustee. (1) Except as provided in subsection (2), a trustee is not liable to the beneficiary for a breach of trust committed by a cotrustee.

(2) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances:

(a) whenever the trustee participates in a breach of trust committed by the cotrustee;

(b) whenever the trustee improperly delegates the administration of the trust to the cotrustee;

(c) whenever the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by the cotrustee;

(d) whenever the trustee negligently enables the cotrustee to commit a breach of trust; or

(e) whenever the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.

(3) The liability of a trustee for acts or omissions of a cotrustee that occurred before October 1, 1989, is governed by prior law and not by this section.

History: **En. Sec. 153, Ch. 685, L. 1989.**

72-34-504. Trustee's liability to beneficiary for acts of predecessor. (1) Except as provided in subsection (2), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee.

(2) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances:

(a) whenever the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee, and the successor trustee improperly permits it to continue;

(b) whenever the successor trustee neglects to take reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee; or

(c) whenever the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or has information from which the successor trustee should have known of the predecessor trustee's breach.

(3) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before October 1, 1989, is governed by prior law and not by this section.

History: **En. Sec. 154, Ch. 685, L. 1989.**

72-34-505 reserved.

72-34-506. Remedies for breach of trust. (1) If a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate:

(a) to compel the trustee to perform the trustee's duties;

(b) to enjoin the trustee from committing a breach of trust;

(c) to compel the trustee to redress a breach of trust by payment of money or otherwise;

(d) to appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

(e) to remove the trustee;

(f) subject to 72-36-201, to set aside acts of the trustee;

(g) to reduce or deny compensation of the trustee;

(h) subject to 72-36-201, to impose an equitable lien or a constructive trust on trust property; or

(i) subject to 72-36-201, to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(2) The provision of remedies for breach of trust in subsection (1) does not prevent resort to any other appropriate remedy provided by statute or the common law.

History: **En. Sec. 155, Ch. 685, L. 1989.**

72-34-507. Remedies for breach exclusively in equity. The remedies of a beneficiary against the trustee are exclusively in equity.

History: **En. Sec. 156, Ch. 685, L. 1989.**

72-34-508. Measure of liability for breach of trust. (1) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances:

(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;

(b) any profit made by the trustee through the breach of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(2) If the trustee has acted reasonably under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subsection (1) if it would be equitable to do so.

History: En. Sec. 157, Ch. 685, L. 1989.

72-34-509. Measure of liability for interest. If the trustee is liable for interest pursuant to 72-34-508, the trustee is liable for the greater of the following amounts:

(1) the amount of interest that accrues at the legal rate on judgments; or

(2) the amount of interest actually received.

History: En. Sec. 158, Ch. 685, L. 1989.

72-34-510 reserved.

72-34-511. Limitations on proceedings against trustee. (1) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(a) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(b) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after the beneficiary discovered, or reasonably should have discovered, the existence of the claim.

(2) For the purpose of subsection (1), a beneficiary is considered to have received an account or report, as follows:

(a) in the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally;

(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

History: **En. Sec. 159, Ch. 685, L. 1989.**

72-34-512. Exculpation of trustee. (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

(2) A provision in the trust instrument is not effective to relieve the trustee of liability:

(a) for breach of trust committed intentionally, with gross negligence, or with reckless indifference to the interest of the beneficiary; or

(b) for any profit that the trustee derives from a breach of trust.

History: **En. Sec. 160, Ch. 685, L. 1989.**

72-34-513. Nonliability for following instructions under revocable trust. (1) Notwithstanding 72-34-512, a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke made when the person is competent, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

History: **En. Sec. 161, Ch. 685, L. 1989; amd. Sec. 35, Ch. 592, L. 1995.**

72-34-514. Consent of beneficiary to relieve trustee of liability for breach of trust. (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of his rights and of the material facts that the trustee knew or should have known and that the trustee did not reasonably believe that the beneficiary knew; or

(c) whenever the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Whenever the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subsection (2) or whenever the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary.

History: **En. Sec. 162, Ch. 685, L. 1989.**

72-34-515. Discharge of trustee's liability by release or contract. (1) Except as provided in subsection (2), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(2) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of making the release or contract;

(b) whenever the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) whenever the release or contract of the beneficiary was induced by improper conduct of the trustee; or

(d) whenever the transaction involved a bargain with the trustee that was not fair and reasonable.

History: En. Sec. 163, Ch. 685, L. 1989.

72-34-516. Discharge of trustee's liability by subsequent affirmance. (1) Except as provided in subsection (2), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at his option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not thereafter reject it and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(a) the beneficiary was under an incapacity;

(b) the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

History: En. Sec. 164, Ch. 685, L. 1989.

72-34-517. Nonliability for refusing to follow directions under revocable trust. A trustee of a revocable trust is not liable for refusing to follow directions from a person holding the power to revoke, including a person to whom the power to direct the trustee is delegated, if in accordance with the trust instrument, the person holding the power is determined to be incompetent, as that or any similar term or phrase is defined in the trust instrument, or, in the absence of a provision in the trust instrument, if the trustee reasonably believes that the person holding the power is incompetent.

History: En. Sec. 36, Ch. 592, L. 1995.

CHAPTER 35

JUDICIAL PROCEEDINGS CONCERNING TRUSTS

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Part 1
Jurisdiction and Venue

72-35-101. Subject matter jurisdiction. (1) The district court having jurisdiction over the trust pursuant to chapters 33 through 36 has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to chapters 33 through 36 has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

History: En. Sec. 165, Ch. 685, L. 1989.

Cross-References

Probate matters — exclusive jurisdiction of court, 72-3-111.

72-35-102. Full-power court. In proceedings concerning the internal affairs of trusts commenced pursuant to chapters 33 through 36, the court has all the powers of a district court exercising its general jurisdiction.

History: En. Sec. 166, Ch. 685, L. 1989.

72-35-103. Principal place of administration of trust. (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

(a) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or

(b) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.

History: En. Sec. 167, Ch. 685, L. 1989.

72-35-104. Jurisdiction over trustees and beneficiaries. Subject to 72-35-105:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under chapters 33 through 36; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under chapters 33 through 36.

History: En. Sec. 168, Ch. 685, L. 1989.

72-35-105. Basis of jurisdiction over trust, trust property, and trust parties. The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

History: En. Sec. 169, Ch. 685, L. 1989.

72-35-106. Venue. (1) The proper county for commencement of a proceeding pursuant to parts 1 and 2 is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding pursuant to chapters 33 through 36 is determined by the rules applicable to civil actions generally.

History: En. Sec. 170, Ch. 685, L. 1989.

72-35-107. Jury trial. There is no right to a jury trial in proceedings under chapters 33 through 36 concerning the internal affairs of trusts.

History: En. Sec. 171, Ch. 685, L. 1989.

Part 2

Notice

72-35-201. Application of part. This part applies to notice in proceedings commenced pursuant to chapters 33 through 36 or notice otherwise required or permitted by chapters 33 through 36.

History: En. Sec. 172, Ch. 685, L. 1989.

72-35-202. Manner of mailing — when mailing complete. (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class mail.

(2) Mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

History: En. Sec. 173, Ch. 685, L. 1989.

72-35-203. Personal delivery instead of mailing. If a notice or other paper is required or permitted to be mailed, it may be delivered personally to the person to whom it is required or permitted to be mailed.

History: En. Sec. 174, Ch. 685, L. 1989.

72-35-204 and 72-35-205 reserved.

72-35-206. Proof of giving notice — conclusiveness of order. (1) Proof of the giving of notice shall be made at or before the hearing to the satisfaction of the court.

(2) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

History: En. Sec. 175, Ch. 685, L. 1989.

72-35-207. Additional notice. (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any state of the proceeding. The court may prescribe the form and method of the notice to be given.

(2) A petitioner or other person required to give notice may cause notice to be given to any person interested in the trust without the need for a court order.

History: En. Sec. 176, Ch. 685, L. 1989.

72-35-208. Shortening time. The court may for good cause shorten the time for giving a notice.

History: En. Sec. 177, Ch. 685, L. 1989.

72-35-209. Notice of postponed hearings. The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.

History: **En. Sec. 178, Ch. 685, L. 1989.**

Part 3
Proceedings Concerning Trusts

72-35-301. Petitioners — grounds for petition. (1) Except as provided in 72-33-701, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(2) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to report information about the trust or account to the beneficiary, if:

(i) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary; and

(ii) no report or account has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

(j) appointing or removing a trustee;

(k) accepting the resignation of a trustee;

(l) compelling redress of a breach of the trust by any available remedy;

(m) approving or directing the modification or termination of the trust;

(n) approving or directing the combination or division of trusts;

(o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest;

(p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;

(q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another;

(r) approving removal of a testamentary trust from continuing court jurisdiction; or

(s) reforming or excusing compliance with the governing instrument of an organization pursuant to 72-34-206.

History: En. Sec. 179, Ch. 685, L. 1989.

Cross-References

Burdens in contested cases, 72-3-310.

72-35-302. Commencement of proceeding. (1) A proceeding under this chapter is commenced by filing a verified petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

(2) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

History: En. Sec. 180, Ch. 685, L. 1989.

72-35-303. Dismissal of petition. The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

History: En. Sec. 181, Ch. 685, L. 1989.

72-35-304 and 72-35-305 reserved.

72-35-306. Notice. At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are not petitioners:

(1) all trustees;

(2) all beneficiaries who are entitled to notice; and

(3) the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

History: En. Sec. 182, Ch. 685, L. 1989.

72-35-307. Request for special notice. (1) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in 72-35-301 and giving an address for receiving notice by mail. Proof of service of the request on the trustee shall be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice pursuant to 72-35-306.

(3) A request for special notice made by a beneficiary whose right to notice is restricted by 72-33-703 is not effective.

History: En. Sec. 183, Ch. 685, L. 1989.

72-35-308. Request for copy of petition. If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within 5 days after service of the notice of appearance or receipt of the request.

History: En. Sec. 184, Ch. 685, L. 1989.

72-35-309 and 72-35-310 reserved.

72-35-311. Authority to make necessary orders — temporary trustee. The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

History: En. Sec. 185, Ch. 685, L. 1989.

72-35-312. Appeal. An appeal may be taken from the grant or denial of any final order made under this chapter, except the following:

(1) compelling the trustee to submit an account or report acts as trustee to a beneficiary pursuant to 72-35-301(2)(g);

(2) accepting the resignation of a trustee pursuant to 72-35-301(2)(k); or

(3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to 72-35-301(2)(r).

History: En. Sec. 186, Ch. 685, L. 1989.

72-35-313. Appointment of guardian ad litem. (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

(a) a minor;
(b) an incapacitated person;
(c) an unborn person;
(d) an unascertained person;
(e) a person whose identity or address is unknown; or
(f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If no guardian ad litem is appointed, an unborn person or an unascertained person is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

History: En. Sec. 187, Ch. 685, L. 1989.

Cross-References

Documents requiring seals, 3-1-206.

72-35-314. Intermittent judicial intervention in trust administration. The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

History: En. Sec. 188, Ch. 685, L. 1989.

72-35-315. Enforcement of beneficiary's rights under charitable trust by attorney general. In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney general may petition under this chapter.

History: **En. Sec. 189, Ch. 685, L. 1989.**

Part 4

Transfer of Trust to Another Jurisdiction

72-35-401. Application of part. (1) This part applies to all of the following:

(a) a trust that is subject to chapters 33 through 36; and

(b) any other trust to which the provisions of this chapter are made applicable by statute or trust instrument.

(2) This part does not prevent the transfer of the place of administration of a trust or of trust property to another jurisdiction by any other available means.

History: **En. Sec. 190, Ch. 685, L. 1989.**

72-35-402. Transfer of place of administration or property from Montana. (1) The court may make an order for the transfer of the place of administration of a trust or the transfer of some or all of the trust property to a jurisdiction outside this state as provided in this chapter.

(2) Except as otherwise provided in this part, proceedings under this chapter are governed by this part.

History: **En. Sec. 191, Ch. 685, L. 1989.**

72-35-403. Contents of petition. The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in this state; and

(b) the trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction;

(2) the names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner;

(3) whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court;

(4) a general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

History: **En. Sec. 192, Ch. 685, L. 1989.**

72-35-404. Notice and hearing. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

History: **En. Sec. 193, Ch. 685, L. 1989.**

72-35-405. Order granting transfer. The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(2) the transfer will not violate the trust instrument; and

(3) any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the trust instrument.

History: **En. Sec. 194, Ch. 685, L. 1989.**

72-35-406. Manner of transfer — discharge of trustee. If a transfer is ordered under this chapter, the court may direct the manner of transfer and impose terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the court is a discharge of the trustee in relation to all property embraced in the order.

History: **En. Sec. 195, Ch. 685, L. 1989.**

Part 5

Transfer of Trust From Another Jurisdiction

72-35-501. Application. (1) This part applies to a trust, or portion thereof, administered in a jurisdiction outside this state.

(2) This part does not prevent the transfer of the place of administration of a trust or trust property to this state by any other available means.

History: **En. Sec. 196, Ch. 685, L. 1989.**

72-35-502. Transfer of place of administration or property to Montana. (1) The court may make an order accepting the transfer of the place of administration of a trust from another jurisdiction to this state or the transfer of some or all of the trust property in another jurisdiction to a trustee in this state as provided in this part.

(2) Except as otherwise provided in this part, proceedings under this part are governed by this chapter.

History: En. Sec. 197, Ch. 685, L. 1989.

72-35-503. Venue. (1) If the petition requests that a resident of this state be appointed trustee, the petition shall be filed in the court of the county where the proposed principal place of administration of the trust pursuant to 72-35-103 is located.

(2) If the petition requests that only a nonresident of this state be appointed trustee, the petition shall be filed in the court of the county where either:

(a) any beneficiary resides; or

(b) a substantial portion of the trust property to be transferred is located or will be located.

History: En. Sec. 198, Ch. 685, L. 1989.

72-35-504. Contents of petition. The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in the other jurisdiction; and

(b) the proposed trustee to whom administration of the trust or trust property will be transferred;

(2) the names, ages, and places of residence of all living beneficiaries, as far as known to the petitioner;

(3) whether administration of the trust has been subject to supervision in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of administration of the trust or trust property to this state has been filed, if necessary, with the court in the other jurisdiction, and the status of the petition or request.

(4) whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If the trustee has agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(5) a general statement of the qualifications of the trustee proposed to administer the trust in this state and the amount of any bond to be requested. If the trustee is an individual, the statement shall include the trustee's age.

(6) a copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred; and

(8) a statement of the reasons for the transfer.

History: En. Sec. 199, Ch. 685, L. 1989.

72-35-505. Notice and hearing. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

History: En. Sec. 200, Ch. 685, L. 1989.

72-35-506. Order accepting transfer and appointing trustee. (1) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of administration of the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(a) the transfer of the trust property to a trustee in this state, or the transfer of the place of administration of the trust to this state, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(b) the transfer will not violate the trust instrument;

(c) the trustee appointed by the court to administer the trust in this state, and to whom the trust property is to be transferred, is qualified, willing, and able to administer the trust or trust property under the trust instrument; and

(d) the proper court in the other jurisdiction has approved the transfer if approval is necessary under the law of the other jurisdiction.

(2) If the court grants the petition under subsection (1), the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in 72-33-603.

History: En. Sec. 201, Ch. 685, L. 1989.

72-35-507. Conditional order accepting transfer. If appropriate to facilitate transfer of the trust property or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if transfer is approved by the proper court of the other jurisdiction.

History: En. Sec. 202, Ch. 685, L. 1989.

72-35-508. Administration of transferred trust. A trust transferred to this state pursuant to this chapter shall be administered in the same manner as a trust of that type created in this state.

History: En. Sec. 203, Ch. 685, L. 1989.

CHAPTER 36

RIGHTS OF THIRD PERSONS

Part 1 — Liability of Trustee to Third Persons

72-36-101. Personal liability of trustee to third persons on contracts.
72-36-102. Personal liability of trustee arising from ownership or control of trust estate.
72-36-103. Personal liability of trustee for torts.
72-36-104. Liability of dissenting cotrustee to third persons.
72-36-105. Assertion of claims against trust.
72-36-106. Liability as between trustee and trust estate.

Part 2 — Protection of Third Persons

72-36-201. Protection of third person dealing with trustee.
72-36-202. Application of property delivered to trustee by third person.
72-36-203. Protection of third person dealing with former trustee.
72-36-204 and 72-36-205 reserved.
72-36-206. Effects on real property transactions.

Part 3 — Rights of Creditors of Trustor

72-36-301. Creditor's rights against revocable trust during trustor's lifetime.
72-36-302. Creditor's rights against revocable trust after trustor's death.

Part 1
Liability of Trustee to Third Persons

72-36-101. Personal liability of trustee to third persons on contracts. (1) Unless otherwise provided in the contract or in chapter 35, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity or identify the trust in the contract.

(2) The personal liability of a trustee on a contract entered into before October 1, 1989, is governed by prior law and not by this section.

History: **En. Sec. 204, Ch. 685, L. 1989.**

72-36-102. Personal liability of trustee arising from ownership or control of trust estate. A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault.

History: **En. Sec. 205, Ch. 685, L. 1989.**

72-36-103. Personal liability of trustee for torts. A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault.

History: **En. Sec. 206, Ch. 685, L. 1989.**

72-36-104. Liability of dissenting cotrustee to third persons. (1) A cotrustee who does not join in exercising a power held by three or more cotrustees is not liable to third persons for the consequences of the exercise of the power.

(2) A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the time the action is taken.

(3) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

History: **En. Sec. 207, Ch. 685, L. 1989.**

Cross-References

Cotrustees, 72-33-611.

Duty with respect to cotrustees, 72-34-116.

72-36-105. Assertion of claims against trust. A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administration of the trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable on the claim.

History: **En. Sec. 208, Ch. 685, L. 1989.**

72-36-106. Liability as between trustee and trust estate. The question of liability as between the trust estate and the trustee personally may be determined in a proceeding under 72-35-301.

History: En. Sec. 209, Ch. 685, L. 1989.

Part 2
Protection of Third Persons

72-36-201. Protection of third person dealing with trustee. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third person acts for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(1) the third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise; and

(2) the third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

History: En. Sec. 210, Ch. 685, L. 1989.

72-36-202. Application of property delivered to trustee by third person. A third person is not bound to ensure the proper application of trust property paid or delivered to the trustee.

History: En. Sec. 211, Ch. 685, L. 1989.

72-36-203. Protection of third person dealing with former trustee. If a third person acting for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third person is fully protected just as if the former trustee were still a trustee.

History: En. Sec. 212, Ch. 685, L. 1989.

72-36-204 and 72-36-205 reserved.

72-36-206. Effects on real property transactions. (1) This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of chapters 33 through 36 relating to the creation or validity of trusts.

(2) Except as otherwise provided in chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance must be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without

actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying the successor trustee's name and address and the date and circumstances of succession, and confirming that the successor trustee is currently lawfully serving in that capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest in the trust. A judgment is binding upon and conclusive against the trust and all persons interested in the trust as to all matters finally adjudicated in the judgment.

(8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may be established by a recorded affidavit of the party or by other recorded instrument, specifying the trustee's name and address and confirming that the party is currently serving as the trustee.

History: En. Sec. 213, Ch. 685, L. 1989; amd. Sec. 2, Ch. 688, L. 1991; amd. Sec. 82, Ch. 494, L. 1993.

Part 3

Rights of Creditors of Trustor

72-36-301. Creditor's rights against revocable trust during trustor's lifetime. If the trustor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the trustor to the extent of the power of revocation during the lifetime of the trustor.

History: En. Sec. 214, Ch. 685, L. 1989.

72-36-302. Creditor's rights against revocable trust after trustor's death. Upon the death of a trustor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the trustor's death is subject to the claims of creditors of the decedent trustor's estate and to the expenses of administration of the estate to the extent that the decedent trustor's estate is inadequate to satisfy those claims and expenses.

History: En. Sec. 215, Ch. 685, L. 1989.

CHAPTER 37

FUNERAL PLAN TRUSTS

Part 1 — General Provisions

72-37-101. Contract for prearranged funeral plan or related services — trust required — interest — exception.
72-37-102. Deposit of money — trust fund.
72-37-103. Report of institution holding deposited money.
72-37-104. Penalty.

Part 1
General Provisions

Part Cross-References

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

72-37-101. Contract for prearranged funeral plan or related services — trust required — interest — exception. (1) In all cases when prior to his death a person or someone in his behalf makes a contract for the final disposition of his body under which contract, pursuant to a prearranged funeral plan, personal property will be delivered upon his death or the professional services of a funeral director, embalmer, cemetery firm, or mausoleum-columbarium corporation will then be furnished, all money paid under such contract shall be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms or, by mutual consent of both parties to the contract, said money is refunded to the proper party.

(2) Accruals of interest upon this money are subject to this same trust.

(3) Such a trust is not necessary for that part of the contract that involves the sale of a cemetery lot if title is passed at the time the cemetery firm receives payment for the cemetery lot.

History: En. Sec. 1, Ch. 232, L. 1953; amd. Sec. 1, Ch. 454, L. 1977; R.C.M. 1947, 86-701; Sec. 72-27-201, MCA 1987; redes. 72-37-101 by Code Commissioner, 1989.

72-37-102. Deposit of money — trust fund. (1) Within 30 days after receipt, a party to a contract for a prearranged funeral plan or related services holding money in trust according to 72-37-101 shall deposit the money in a banking institution or invest the money in the stock of a savings or building and loan association or in the shares of a credit union organized under the laws of the state of Montana or of the United States and having its principal place of business in this state. The deposits of the money in a banking institution or the investment in a savings or building and loan association or credit union must be insured by an instrumentality of the federal government.

(2) The deposits or investments constitute a trust fund for the benefit of the person who has contracted for a prearranged funeral plan or related services. The money must be deposited in a separate account in the name of the depositor as trustee for the person who has contracted for a prearranged funeral plan or related services.

History: En. Sec. 2, Ch. 232, L. 1953; R.C.M. 1947, 86-702; Sec. 72-27-202, MCA 1987; redes. 72-37-102 by Code Commissioner, 1989; amd. Sec. 7, Ch. 365, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 365 in (1), in first sentence near beginning after "contract", inserted "for a prearranged funeral plan or related services" and near middle, after "association", inserted "or in the shares of a credit union" and in second sentence, after "deposits of", substituted "the money in a banking institution or the investment in a" for "which banking institution or the stock liability of which" and after "association" substituted "or credit union must be" for "are"; in (2), in first sentence after "contracted for", substituted "a prearranged funeral plan or related services" for "such property and services upon his death" and in second sentence, after "contracted for", substituted "a prearranged funeral plan or related services" for "such property and services upon his death"; and made minor changes in style.

72-37-103. Report of institution holding deposited money. A banking institution, savings or building and loan association, or credit union receiving money in trust under 72-37-102 shall report to the department of commerce before February 1 of each year all amounts received and held in trust. This report must show the name and address of each trustee and beneficiary of a trust, the principal amount remaining, and the interest or dividends paid on each account.

History: En. Sec. 3, Ch. 232, L. 1953; amd. Sec. 144, Ch. 431, L. 1975; R.C.M. 1947, 86-703; amd. Sec. 2, Ch. 274, L. 1981; Sec. 72-27-203, MCA 1987; redes. 72-37-103 by Code Commissioner, 1989; amd. Sec. 8, Ch. 365, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 365 in first sentence, after "association", inserted "or credit union" and in second sentence, after "trustee and", substituted "beneficiary of a" for "cestui que"; and made minor changes in style.

72-37-104. Penalty. Any person willfully violating the provisions of 72-37-102 shall be guilty of a misdemeanor and upon conviction therefor shall be punished as provided in 46-18-212.

History: En. Sec. 4, Ch. 232, L. 1953; R.C.M. 1947, 86-704; Sec. 72-27-204, MCA 1987; redes. 72-37-104 by Code Commissioner, 1989.

TITLES 73 AND 74

RESERVED

TITLE 75

ENVIRONMENTAL PROTECTION

Ch.
1. Environmental Policy and Protection Generally.
2. Air Quality.
3. Radon Control.
Chapter 4 reserved.
5. Water Quality.
6. Public Water Supplies, Distribution, and Treatment.
7. Aquatic Ecosystem Protections.
Chapters 8 and 9 reserved.
10. Waste and Litter Control.
11. Underground Storage Tanks.
Chapters 12 through 14 reserved.
15. Landscape Management.
16. Transboundary Pollution.
Chapters 17 through 19 reserved.
20. Major Facility Siting.

CHAPTER 1

ENVIRONMENTAL POLICY AND PROTECTION GENERALLY

Part 1 — General Provisions

75-1-101. Short title.
75-1-102. Purpose.
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75-1-104. Specific statutory obligations unimpaired.
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75-1-301. Definition of council.
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75-1-323. Staff for environmental quality council.
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Part 11 — Environmental Contingency Grant Program

75-1-1101. Environmental contingency account objectives.
75-1-1102. Repealed.
75-1-1103 through 75-1-1110 reserved.
75-1-1111. Repealed.
75-1-1112. Repealed.

Part 12 — Voluntary Environmental Audit Act

75-1-1201. Short title.
75-1-1202. Purpose.
75-1-1203. Definitions.
75-1-1204. Immunity from imposition of civil or administrative penalties for violations found and disclosed.
75-1-1205. Submission and use of environmental audit information.
75-1-1206. Limitations on applicability.

Chapter Cross-References

Beauty of state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Agricultural chemical ground water protection, Title 80, ch. 15.

State policy of consistency and continuity in adoption and application of environmental rules, 90-1-101.

Part 1
General Provisions

Part Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

75-1-101. Short title. Parts 1 through 3 may be cited as the "Montana Environmental Policy Act".

History: En. Sec. 1, Ch. 238, L. 1971; R.C.M. 1947, 69-6501.

Cross-References

State policy of consistency and continuity in adoption and application of environmental rules, 90-1-101.

75-1-102. Purpose. The purpose of parts 1 through 3 is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971; R.C.M. 1947, 69-6502; amd. Sec. 1, Ch. 352, L. 1995.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Department of Public Service Regulation, 2-15-2601.

75-1-103. Policy. (1) The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources so that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) ensure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) protect the right to use and enjoy private property free of undue government regulation;

(e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(f) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

(g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: En. Sec. 3, Ch. 238, L. 1971; R.C.M. 1947, 69-6503; amd. Sec. 2, Ch. 352, L. 1995.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Private Property Assessment Act, Title 2, ch. 10, part 1.

Comments of historic preservation officer, 22-3-433.

Renewable resource development, Title 90, ch. 2.

75-1-104. Specific statutory obligations unimpaired. Nothing in 75-1-103 or 75-1-201 shall in any way affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality;

(2) coordinate or consult with any other state or federal agency; or

(3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: En. Sec. 6, Ch. 238, L. 1971; R.C.M. 1947, 69-6506.

75-1-105. Policies and goals supplementary. The policies and goals set forth in parts 1 through 3 are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: En. Sec. 7, Ch. 238, L. 1971; R.C.M. 1947, 69-6507.

75-1-106. Private property protection — ongoing programs of state government. Nothing in 75-1-102, 75-1-103, or 75-1-201 expands or diminishes private property protection afforded in the U.S. or Montana constitutions. Nothing in 75-1-102, 75-1-103, or 75-1-201 may be construed to preclude ongoing programs of state government pending the completion of any statements that may be required by 75-1-102, 75-1-103, or 75-1-201.

History: En. Sec. 4, Ch. 352, L. 1995.

Part 2

Environmental Impact Statements

75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) In any action challenging or seeking review of an agency's determination that a statement pursuant to subsection (1)(b)(iv) is not required, the burden of proof is on the person challenging the decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

History: En. Sec. 4, Ch. 238, L. 1971; R.C.M. 1947, 69-6504; amd. Sec. 1, Ch. 391, L. 1979; amd. Sec. 1, Ch. 473, L. 1987; amd. Sec. 1, Ch. 566, L. 1989; amd. Sec. 1, Ch. 331, L.

1995; amd. Sec. 3, Ch. 352, L. 1995; amd. Sec. 177, Ch. 418, L. 1995; amd. Sec. 67, Ch. 545, L. 1995.

Cross-References

Citizens' right to participate satisfied if environmental impact statement filed, 2-3-104.

Statement to contain information regarding heritage properties and paleontological remains, 22-3-433.

Public Service Commission, Title 69, ch. 1, part 1.

Statement under lakeshore protection provisions required, 75-7-213.

Impact statement for facility siting, 75-20-211.

Fees for impact statements concerning water permits, 85-2-124.

Energy emergency provisions — exclusion, 90-4-310.

75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201. An agency must determine within 30 days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this part. The fee assessed under this part shall be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. No fee may be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(1).

Cross-References

Fees authorized for environmental review of subdivision plats, 76-4-105.

Fees in connection with environmental impact statement required before issuing permits to appropriate water, 85-2-124.

75-1-203. Fee schedule — maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of $2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus 1/2 of 1% of any estimated cost over $20 million and up to $100 million, plus 1/4 of 1% of any estimated cost over $100 million and up to $300 million, plus 1/8 of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities. The estimated cost must be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(2), (7); amd. Sec. 47, Ch. 112, L. 1991; amd. Sec. 41, Ch. 349, L. 1993.

75-1-204. Application of administrative procedure act. In adopting rules prescribing fees as authorized by this part, an agency shall comply with the provisions of the Montana Administrative Procedure Act.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(4).

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-1-205. Use of fees. All fees collected under this part shall be deposited in the state special revenue fund as provided in 17-2-102. All fees paid pursuant to this part shall be used as herein provided. Upon completion of the necessary work, each agency will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(5); amd. Sec. 1, Ch. 277, L. 1983.

75-1-206. Multiple applications or combined facility. In cases where a combined facility proposed by an applicant requires action by more than one agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one fee pursuant to this part, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the necessary funds to the other agencies which require funds for the completion of the necessary work.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(6).

75-1-207. Major facility siting applications excepted. No fee as prescribed by this part may be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, chapter 20 of this title.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(3).

Part 3

Environmental Quality Council

75-1-301. Definition of council. In this part "council" means the environmental quality council provided for in 5-16-101.

History: En. by Code Commissioner, 1979.

Cross-References

Qualifications, 5-16-102.
Term of membership, 5-16-103.
Officers, 5-16-105.

75-1-302. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council is entitled to receive compensation and expenses as provided in 5-2-302. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members but shall be reimbursed for their expenses.

History: En. Sec. 10, Ch. 238, L. 1971; amd. Sec. 6, Ch. 103, L. 1977; R.C.M. 1947, 69-6510.

75-1-303 through 75-1-310 reserved.

75-1-311. Examination of records of government agencies. The council shall have the authority to investigate, examine, and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: **En. Sec. 15, Ch. 238, L. 1971; R.C.M. 1947, 69-6515.**

75-1-312. Hearings — council subpoena power — contempt proceedings. In the discharge of its duties the council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: **En. Sec. 16, Ch. 238, L. 1971; R.C.M. 1947, 69-6516.**

Cross-References

Warrant of attachment or commitment for contempt, 3-1-513.

Depositions upon oral examinations, Rules 30(a) through 30(g) and 31(a) through 31(c), M.R.Civ.P. (see Title 25, ch. 20).

Subpoena — disobedience, 26-2-104 through 26-2-107.

Criminal contempt, 45-7-309.

75-1-313. Consultation with other groups — utilization of services. In exercising its powers, functions, and duties under parts 1 through 3, the council shall:

(1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals in order that duplication of effort and expense may be avoided, thus assuring that the council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

History: **En. Sec. 17, Ch. 238, L. 1971; R.C.M. 1947, 69-6517.**

75-1-314. Reporting requirements. (1) The departments of environmental quality, agriculture, and natural resources and conservation shall biennially report to the council the following natural resource and environmental compliance and enforcement information:

(a) the activities and efforts taking place to promote compliance assistance and education;

(b) the size and description of the regulated community and the estimated proportion of that community that is in compliance;

(c) the number, description, method of discovery, and significance of noncompliances, including those noncompliances that are pending; and

(d) a description of how the department has addressed the noncompliances identified in subsection (1)(c) and a list of the noncompliances left unresolved.

(2) When practical, reporting required in subsection (1) should include quantitative trend information.

History: En. Sec. 1, Ch. 38, L. 1997.

Compiler's Comments

Effective Date: Section 3, Ch. 38, L. 1997, provided: "[This act] is effective July 1, 1997."

75-1-315 through 75-1-320 reserved.

75-1-321. Repealed. Sec. 82, Ch. 545, L. 1995.

History: En. Sec. 11, Ch. 238, L. 1971; R.C.M. 1947, 69-6511.

75-1-322. Repealed. Sec. 82, Ch. 545, L. 1995.

History: En. Sec. 13, Ch. 238, L. 1971; R.C.M. 1947, 69-6513.

75-1-323. Staff for environmental quality council. The legislative services division shall provide sufficient and appropriate support to the environmental quality council in order that it may carry out its statutory duties, within the limitations of legislative appropriations. The environmental quality council staff is a principal subdivision within the legislative services division. There is within the legislative services division a legislative environmental analyst. The legislative environmental analyst is the primary staff person for the environmental quality council and shall supervise staff assigned to the environmental quality council. The environmental quality council shall select the legislative environmental analyst with the concurrence of the legislative council.

History: En. Sec. 12, Ch. 238, L. 1971; R.C.M. 1947, 69-6512; amd. Sec. 68, Ch. 545, L. 1995.

75-1-324. Duties of environmental quality council. The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other

information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan; and

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations.

History: En. Sec. 14, Ch. 238, L. 1971; R.C.M. 1947, 69-6514; amd. Sec. 42, Ch. 349, L. 1993; amd. Sec. 69, Ch. 545, L. 1995.

Parts 4 through 10 reserved

Part 11

Environmental Contingency Grant Program

Part Cross-References

Resource indemnity trust, Art. IX, sec. 2, Mont. Const.

Department of Natural Resources and Conservation, 2-15-3301.

Resource indemnity trust tax, Title 15, ch. 38.

Fund structure, Title 17, ch. 2.

Renewable resource grant and loan program, Title 85, ch. 1, part 6.

Renewable resource development program, Title 90, ch. 2.

75-1-1101. Environmental contingency account objectives. (1) There is an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, allocation may not be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development;

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the general fund.

(5) The governor shall submit, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report.

History: En. Sec. 4, HB 922, L. 1985; amd. Sec. 5, HB 30, Sp. L. June 1986; amd. Sec. 138, Ch. 370, L. 1987; amd. Sec. 13, Ch. 418, L. 1987; amd. Sec. 48, Ch. 112, L. 1991; amd. Sec. 43, Ch. 349, L. 1993; amd. Sec. 15, Ch. 270, L. 1995; amd. Sec. 263, Ch. 42, L. 1997; amd. Sec. 4, Ch. 444, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (4) substituted "general fund" for "resource indemnity trust interest account"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 444 at end of (4) substituted "general fund" for "resource indemnity trust interest account"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Resource indemnity trust, Art. IX, sec. 2, Mont. Const.

Department of Natural Resources and Conservation, 2-15-3301.

Resource indemnity trust tax, Title 15, ch. 38.

Abatement of environmental emergencies, 82-4-357.

75-1-1102. Repealed. Secs. 16(1) and 21(2), Ch. 418, L. 1987.
History: En. Sec. 2, HB 922, L. 1985.

75-1-1103 through 75-1-1110 reserved.

75-1-1111. Repealed. Secs. 16(1) and 21(2), Ch. 418, L. 1987.
History: En. Sec. 5, HB 922, L. 1985.

75-1-1112. Repealed. Secs. 16(1) and 21(2), Ch. 418, L. 1987.
History: En. Sec. 6, HB 922, L. 1985.

Part 12

Voluntary Environmental Audit Act

Part Compiler's Comments

Termination: Section 10, Ch. 534, L. 1997, provided: "[This act] terminates October 1, 2001."

75-1-1201. *(Temporary)* **Short title.** This part may be cited as the "Voluntary Environmental Audit Act". *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 1, Ch. 534, L. 1997.

75-1-1202. *(Temporary)* **Purpose.** The legislature finds that environmental protection and environmental quality will be enhanced by incentives to voluntarily identify and remedy violations of environmental laws and that the public will be benefited by the voluntary identification and remedy. The legislature further finds that nothing in 75-1-1203 through 75-1-1206 is intended to inhibit or to be a substitute for the exercise of the regulatory authority by those agencies entrusted with protecting Montana's environment. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 2, Ch. 534, L. 1997.

75-1-1203. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the:

(a) department of justice provided for in 2-15-2001;

(b) department of agriculture provided for in 2-15-3001; or

(c) department of environmental quality provided for in 2-15-3501.

(2) "Environmental audit" is a periodic, documented, voluntary internal assessment, evaluation, or review not required by law, rule, or permit that is conducted by a regulated entity or its agent and initiated by the regulated entity for the purpose of determining compliance with environmental law, rule, or permit enforced by the department. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 3, Ch. 534, L. 1997.

75-1-1204. *(Temporary)* **Immunity from imposition of civil or administrative penalties for violations found and disclosed.** The state or the department may not pursue civil or administrative penalties under this title against a regulated entity or its agent acting within the scope of the agent's authority for violations discovered during an environmental audit and disclosed within 30 days in writing to the department after the violation is determined to exist if the following conditions are met:

(1) a written compliance schedule is negotiated between the department and the regulated entity to promptly correct violations disclosed unless the violation has been resolved to the satisfaction of the department at the time of the disclosure;

(2) the regulated entity takes steps to prevent recurrence of the violation; and

(3) the regulated entity cooperates with the department and provides information that is necessary for the implementation of this part. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 4, Ch. 534, L. 1997.

75-1-1205. *(Temporary)* **Submission and use of environmental audit information.** (1) If a regulated entity discloses a violation to the department that is found during an environmental audit, the disclosure must be submitted on a form provided by the department that includes submittal of the following information:

(a) the date of discovery of the violation;
(b) the name and location of the regulated entity;
(c) identification of the law or rule violated;
(d) a description of the conditions relating to or affecting the violation;
(e) compliance efforts made to correct or eliminate the violation;
(f) recommendations for additional compliance efforts, if necessary, to correct or eliminate the violation; and
(g) recommendations necessary to prevent reoccurrence of the violation.

(2) (a) The form submitted to the department in subsection (1) is public information, but the department may not request the environmental audit. The department may request all relevant facts and data that the department needs to independently establish the nature and extent of the violation and to determine whether all damage created by the violation has been corrected. The environmental audit report and its relevant underlying data is subject to discovery according to the rules of civil or criminal procedure. Any information contained in an environmental audit form pertaining to violations that were discovered as a result of the audit and disclosed and corrected as required by this part may not be used by the department against the regulated entity in any administrative hearing or judicial action.

(b) The prohibition in subsection (2)(a) does not apply to the use of voluntary statements made in connection with the information when offered for impeachment purposes or in a subsequent action for perjury, false statement, or contempt.

(3) Documents, communications, compliance data, reports, or other information required to be collected, developed, maintained, or reported to the department according to state law, rule, or permit are not covered by the provisions of this part. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 5, Ch. 534, L. 1997.

75-1-1206. *(Temporary)* **Limitations on applicability.** (1) Sections 75-1-1201 through 75-1-1205 do not apply to a violation if:

(a) the regulated entity purposely or knowingly committed the violation;
(b) the violation was the result of gross negligence of the regulated entity;
(c) the regulated entity has established a pattern of violating a specific state or federal environmental law, rule, regulation, permit, order, or compliance schedule within the 3 years before the date of the disclosure at the same facility;
(d) the regulated entity has not corrected the violation according to any compliance schedule negotiated pursuant to 75-1-1204;
(e) before the date of the environmental audit through which a violation was discovered, an investigation or an administrative or judicial proceeding regarding the specific voluntarily disclosed violation is initiated by the department;
(f) (i) the department has assumed primacy over the administration of a federally delegated environmental law or program and 75-1-1201 through 75-1-1205 would cause the state program not to meet the delegation requirements for that program; or
(ii) 75-1-1201 through 75-1-1205 would prevent the state from obtaining primacy; or

(g) the violation disclosed to the department by the regulated entity caused actual substantial damage to human health or the environment.

(2) An environmental audit may not be used to prevent the department from carrying out its statutory or regulatory functions. *(Terminates October 1, 2001—sec. 10, Ch. 534, L. 1997.)*

History: En. Sec. 6, Ch. 534, L. 1997.

CHAPTER 2

AIR QUALITY

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Chapter Cross-References

Local government smoke abatement programs, Title 7, ch. 31, part 1.

Montana Clean Indoor Air Act of 1979, Title 50, ch. 40.

Energy emergency provisions — exclusion, 90-4-310.

Part 1

General Provisions and Administration

75-2-101. Short title. Parts 1 through 4 of this chapter are known and may be cited as the "Clean Air Act of Montana".

History: **En. Sec. 1, Ch. 313, L. 1967; R.C.M. 1947, 69-3904; amd. Sec. 264, Ch. 42, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 42 at beginning substituted "Parts 1 through 4 of this chapter" for "This chapter"; and made minor changes in style. Amendment effective March 12, 1997.

75-2-102. Policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.

(2) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(3) To these ends it is the purpose of this chapter to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 313, L. 1967; R.C.M. 1947, 69-3905.

Cross-References

Beauty of state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) "Board" means the board of environmental review provided for in 2-15-3502.

(6) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

(9) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(13) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(14) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

(15) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

(16) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation.

History: En. Sec. 3, Ch. 313, L. 1967; amd. Sec. 13, Ch. 349, L. 1974; amd. Sec. 1, Ch. 308, L. 1977; R.C.M. 1947, 69-3906; amd. Sec. 1, Ch. 129, L. 1993; amd. Sec. 1, Ch. 502, L. 1993; amd. Sec. 1, Ch. 639, L. 1993; amd. Sec. 178, Ch. 418, L. 1995; amd. Secs. 523, 568, Ch. 546, L. 1995.

75-2-104. Limitations — personal cause of action unabridged. Nothing in this chapter shall be construed to:

(1) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(2) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(3) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety;

(4) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

History: (1) thru (3)En. Sec. 19, Ch. 313, L. 1967; Sec. 69-3922, R.C.M. 1947; (4)En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; Sec. 69-3921, R.C.M. 1947; R.C.M. 1947, 69-3921(4), 69-3922.

Cross-References

Indemnification for damage to air resources, Title 15, ch. 38.

Workers' compensation — liability, Title 39, ch. 71, part 4.

Workers' compensation — claim, Title 39, ch. 71, part 6.

Liability of employer for occupational disease, 39-72-302.

Montana Clean Indoor Air Act of 1979, Title 50, ch. 40.

Occupational health, Title 50, ch. 70.

Occupational safety, Title 50, ch. 71.

Mine safety, Title 50, ch. 72.

Mining operation — preventive measures, 82-4-231.

75-2-105. Confidentiality of records. (1) Records or other information concerning air pollutant sources that are furnished to or obtained by the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air pollutant source that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party in the action. A trade secret not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section.

History: En. Sec. 15, Ch. 313, L. 1967; amd. Sec. 22, Ch. 349, L. 1974; amd. Sec. 1, Ch. 248, L. 1975; R.C.M. 1947, 69-3918; amd. Sec. 2, Ch. 502, L. 1993.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Uniform Declaratory Judgments Act — procedure, Title 27, ch. 8, part 3.

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

75-2-106. Small business compliance assistance advisory council — duties — secretary — meetings. (1) The small business compliance assistance advisory council, established in 2-15-2110, shall:

(a) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program administered by the department;

(b) make periodic reports to the appropriate federal agency concerning the compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.;

(c) review information for small business stationary sources to ensure that the information is understandable by the lay person and recommend changes to make the information understandable;

(d) consult with the small business stationary source representative provided for in 75-2-109 regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(e) perform other duties necessary to meet the requirements of the federal Clean Air Act.

(2) The council shall elect a presiding officer from among its membership.

(3) The secretary of the council must be an employee of the department assigned to the small business stationary source technical and environmental compliance assistance program. The secretary shall keep all records of meetings

and actions taken by the council and is responsible for the development and dissemination of any reports and advisory opinions of the council.

(4) The council shall hold at least one regular meeting each calendar year and keep a summary record of its proceedings that is open to the public for inspection. Special meetings may be called by the presiding officer or a majority of the council members. The secretary shall provide advance notice of the time and place for meetings to each member of the council.

History: En. Sec. 15, Ch. 502, L. 1993.

75-2-107. Small business stationary source technical and environmental compliance assistance program — duties. (1) The department shall establish a small business stationary source technical and environmental compliance assistance program.

(2) The program shall:

(a) provide information to small business stationary sources on compliance methods and technologies, pollution prevention, and accidental release detection and prevention;

(b) assist small business stationary sources in determining applicable requirements under this chapter and in receiving permits in a timely and efficient manner;

(c) provide small business stationary sources timely notice of their rights and obligations under this chapter;

(d) provide information to small business stationary sources regarding the availability of audit services that are useful for determining compliance status with the requirements of this chapter; and

(e) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

History: En. Sec. 16, Ch. 502, L. 1993.

75-2-108. Small business stationary sources — exceptions — waivers. (1) Upon petition, the department may designate a source to be a small business stationary source for purposes of receiving assistance from the small business stationary source technical and environmental compliance assistance program if the stationary source does not emit more than 100 tons per year of all air pollutants and:

(a) is a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(b) emits 50 tons or more per year of an air pollutant; or

(c) emits more than 75 tons per year of all air pollutants.

(2) After notice and an opportunity for public comment, the department may grant a petition submitted under subsection (1) upon finding that the source of air pollutants does not have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program.

(3) After notice and opportunity for public comment, the department may exclude from the definition of small business stationary source in 75-2-103 a category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical

and environmental compliance assistance program. The department may make this determination only after consulting with the appropriate federal agencies under Subchapter V of the federal Clean Air Act.

History: En. Sec. 17, Ch. 502, L. 1993.

75-2-109. Small business stationary source representative — duties. (1) The department shall establish a small business stationary source representative position that is not located in the department or subject to the direct supervision of the department.

(2) The small business stationary source representative shall represent the interests of small business stationary sources before the department and other appropriate local, state, and federal agencies concerning the implementation and application of the requirements of this chapter. In addition, the representative shall provide assistance to small business stationary sources in meeting the requirements of this chapter. In carrying out these activities, the representative shall:

(a) monitor the activities of the small business stationary source technical and environmental compliance assistance program;

(b) review and provide comments and recommendations to the department, local air pollution control programs, and the appropriate federal agencies regarding the development and implementation of regulations pertaining to air quality that impact small business stationary sources;

(c) facilitate and promote the participation of small business stationary sources in the development of new regulations pertaining to air quality that impact small business stationary sources;

(d) assist in the preparation and dissemination of reports and other information regarding the applicability of the requirements of this chapter to small business stationary sources;

(e) assist in the preparation of guideline documents by the small business stationary source technical and environmental compliance assistance program to ensure that these documents are readily understandable by the lay person;

(f) assist small business stationary sources and their trade associations to encourage voluntary compliance with the requirements of this chapter;

(g) cooperate with appropriate local, state, and federal agencies and private sector financial institutions to assist small business stationary sources in locating financial assistance necessary for compliance with the requirements of this chapter;

(h) consult with the small business compliance assistance advisory council regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(i) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

History: En. Sec. 18, Ch. 502, L. 1993.

75-2-110 reserved.

75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and

in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits and permit applications, consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(1) thru (4); amd. Sec. 1, Ch. 560, L. 1979; amd. Sec. 1, Ch. 652, L. 1991; amd. Sec. 7, Ch. 471, L. 1995.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Board of Environmental Review, 2-15-3502.

75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis.

History: (1)En. Sec. 4, Ch. 313, L. 1967; amd. Sec. 14, Ch. 349, L. 1974; Sec. 69-3907, R.C.M. 1947; (2)En. 69-3909.1 by Sec. 18, Ch. 349, L. 1974; Sec. 69-3909.1, R.C.M. 1947; R.C.M. 1947, 69-3907, 69-3909.1; (3)En. Sec. 2, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Eligibility for state aid, 75-2-302.

Enforcement by Department, 75-2-401.

75-2-113. Terminated. Sec. 5, Ch. 673, L. 1989.

History: En. Sec. 1, Ch. 673, L. 1989.

75-2-114. Terminated. Sec. 5, Ch. 673, L. 1989.

History: En. Sec. 2, Ch. 673, L. 1989.

75-2-115 through 75-2-120 reserved.

75-2-121. Advisory council. The advisory council shall act in an advisory capacity to the department on matters relating to air pollution.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(4).

Cross-References

Composition of Council, 2-15-2106.

75-2-122. Chairman — secretary. (1) A chairman shall be elected by the advisory council from among its number.

(2) The secretary of the advisory council shall be a member of the staff of the department, designated by the director. The secretary shall keep all records of meetings of and actions taken by the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this chapter and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this chapter or specific authority otherwise given the advisory council.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(1), (3).

Cross-References
Term of office, 2-15-2106.

75-2-123. Meetings. The advisory council shall hold at least two regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him on receipt of a written request signed by two or more members of the advisory council. Notice of the time and place for meetings shall be given in advance to each member of the advisory council by the secretary.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(2).

Cross-References
Right of public participation in government, Art. II, sec. 8, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Part 2
Standards, Permits, and Variances

Part Cross-References
Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-2-201. Classifying and reporting air contaminant sources. (1) The board may classify air contaminant sources which in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the board may require reporting shall make reports containing such information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution which is available or reasonably capable of being assembled.

History: En. Sec. 7, Ch. 313, L. 1967; R.C.M. 1947, 69-3910.

75-2-202. Board to set ambient air quality standards. (1) The board shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides shall be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(5); amd. Sec. 1, Ch. 565, L. 1981.

Cross-References
Compliance with air standards for facility siting, 75-20-401.

75-2-203. Board to set emission levels. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlling, and no emission in excess thereof shall be lawful.

(2) In any area where the concentration of air pollution sources or of population or where the nature of the economy or of land and its uses so require, the board may fix more stringent requirements governing the emission of air pollutants than those in effect pursuant to subsection (1) of this section.

(3) The board may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the board may, if necessary in some localities of this state, set more stringent standards by rule.

History: En. Sec. 10, Ch. 313, L. 1967; R.C.M. 1947, 69-3913.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-2-204. Rules relating to construction, installation, alteration, operation, or use. The board may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless a permit has been obtained under this part.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(1); amd. Sec. 3, Ch. 502, L. 1993.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given, at the time of publication, the proposed text to comment thereon. Such notice shall be given and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(1); amd. Sec. 3, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-206. Study of effects of sulfur dioxide on health and environment. (1) To the extent that funds are available, the board shall conduct an ongoing study in areas of Montana where there are major industrial sources of sulfur dioxide. The study shall concentrate on the effects on human health and the environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

(2) Notwithstanding other funding sources to pay for the study, the board may accept funds and grants from private and public sources.

History: En. Sec. 2, Ch. 504, L. 1987.

75-2-207. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the board or department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board or department may incorporate by reference comparable federal regulations or guidelines.

(2) The board or department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board or department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's or department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board or department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule. If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the board or department for a rule review under subsection (4)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 2, Ch. 471, L. 1995.

75-2-208 through 75-2-210 reserved.

75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air

pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(6) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(7) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (6) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(8) (a) If an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (7), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (7), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(9) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(10) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(part); amd. Sec. 4, Ch. 560, L. 1979; amd. Sec. 1, Ch. 196, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 652, L. 1991; amd. Sec. 4, Ch. 502, L. 1993; amd. Sec. 2, Ch. 639, L. 1993; amd. Sec. 1, Ch. 85, L. 1995; amd. Sec. 1, Ch. 273, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 273 inserted (8)(a)(iii) requiring notice within 30 days of issuance of the final environmental impact statement if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3; and made minor changes in style. Amendment effective April 16, 1997.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Air pollution control equipment — determination of use for tax purposes, 15-6-135.

Fund structure, 17-2-102.

Environmental impact statement, 75-1-201.

Requirement that siting of facility includes air permit — application — decision, 75-20-211, 75-20-401.

Dairy products manufacturing plant — approval of air pollutant control by Department of Environmental Quality, 81-22-403.

75-2-212. Variances — renewals — filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption may be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application shall be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal the applicant shall give public notice of his application in accordance with rules of the board. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review thereof as provided by 75-2-411.

(5) Nothing in this section and no exemption, partial exemption, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or his property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment (hereinafter called a facility) who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000. The department shall prepare a statement of actual costs, and funds in excess of this shall be returned to the applicant. The person requesting the variance shall describe the facility in sufficient

detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if no public hearing, environmental impact statement, or appreciable investigation by the department is necessary, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department to:

(a) compile the information required for rendering a decision on the request;

(b) compile the information necessary for any environmental impact statements;

(c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter.

History: En. Sec. 13, Ch. 313, L. 1967; amd. Sec. 1, Ch. 186, L. 1975; amd. Sec. 8, Ch. 140, L. 1977; R.C.M. 1947, 69-3916; amd. Sec. 1, Ch. 265, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.

75-2-213 and 75-2-214 reserved.

75-2-215. Solid or hazardous waste incineration — additional permit requirements. (1) Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

(3) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127(2) and 7-1-4128(2), describing the proposed project;

(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit application or modification;

(d) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

(e) the department has issued a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211 and this section, whichever is later.

(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The board may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter.

History: En. Sec. 5, Ch. 696, L. 1989; amd. Sec. 1, Ch. 605, L. 1991; amd. Sec. 2, Ch. 129, L. 1993; amd. Sec. 3, Ch. 639, L. 1993.

75-2-216. Adoption of rules for solid or hazardous waste incinerator permits. The department shall proceed in a reasonable and timely manner in adopting rules implementing 75-2-215.

History: En. Sec. 1, Ch. 16, Sp. L. July 1992; amd. Sec. 16, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 deleted (1) that read: "(1) Except for remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-405(2)(c) or 75-10-416, until October 1, 1993, the department may not issue a permit to a solid or hazardous waste incinerator subject to the requirements of 75-2-215"; at beginning deleted "Notwithstanding the provisions of (1)"; and at end deleted "and in processing air quality permit applications required under 75-2-211 for solid or hazardous waste incinerators".

75-2-217. Operating permit program — exemptions — general requirements — duration. (1) The board shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to be administered by the department under this chapter. The board shall promulgate rules that are consistent with the operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and implementing regulations.

(2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this section or operate any source required to have

a permit under this section without having complied with the requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219, and this section.

(4) The board may by rule provide for the exemption of one or more source categories, in whole or in part, from all or part of the requirements of this section if the board determines that compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The board may premise this determination upon a similar determination by the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(5) The board may by rule provide for general operating permits covering numerous similar sources.

(6) An operating permit issued by the department under 75-2-218 and this section is effective for a period not to exceed 5 years and may be renewed.

(7) The operating permit program administered by the department pursuant to this section must include the following:

(a) adequate procedures that are streamlined and reasonable for:

(i) expeditiously determining when applications are complete;

(ii) processing applications; and

(iii) expeditiously reviewing permit actions, including application renewals or revisions;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;

(f) deadlines for submitting permit applications and compliance plans that are not later than 12 months after the source becomes subject to the operating permit requirement;

(g) deadlines for submitting permit renewal applications that are not later than 6 months before expiration of the existing operating permit;

(h) requirements for compliance plans that must be submitted with permit and renewal applications, including schedules of compliance and progress reports;

(i) requirements and procedures for periodic certification of source compliance with permit requirements, including the prompt reporting of any deviations from permit requirements;

(j) requirements for submission of any plans, specifications, or other information that the department considers necessary under this section;

(k) conditions and procedures for the transfer of operating permits;

(l) requirements and procedures for suspension, modification, amendment, and revocation of permits by the department for cause, including the modification or amendment of permits before renewal or termination to incorporate applicable limitations or requirements effective after permit issuance;

(m) requirements and procedures for incorporating into permits and permit renewals all applicable emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(n) requirements and procedures for permit modification and amendment;

(o) procedures for tracking activities conducted under general permits;

(p) requirements and procedures for issuing a single operating permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location;

(q) requirements and procedures for allowing changes within a permitted facility without requiring a permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions allowable under the permit; and

(r) other requirements necessary for the department to obtain the authorization to administer an operating permit program under the provisions of Subchapter V of the federal Clean Air Act.

History: En. Sec. 9, Ch. 502, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-218. Permits for operation — application completeness — action by department — application shield — review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in subsection (3), the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit

applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217. Any transition schedule for action by the department must ensure that all permit applications required under 75-2-217 and this subsection for existing sources will be acted upon by the department before November 15, 1997.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(7) The requirements of subsections (5) and (6) apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be in compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217.

History: En. Sec. 10, Ch. 502, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-219. Permits for operation — limitations. Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the board's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq.

History: En. Sec. 11, Ch. 502, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-220. Fees — special assessments — late payment assessments. (1) Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements in this chapter, including:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit. This amount does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) In recovering the costs described in subsection (1), the department may assess an application fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fee required under subsection (1), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or

demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(5) (a) If the applicant or permitholder fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at the rate contained in 15-31-510; or

(ii) revoke the permit consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant or permitholder has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The board shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The board may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more than one fee annually to a source of air pollutants for the costs identified in subsection (1).

History: En. Sec. 12, Ch. 502, L. 1993; amd. Sec. 5, Ch. 51, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 51 in (5)(a)(i) substituted "15-31-510" for "15-31-510(3)". Amendment effective March 13, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-221. Deposit of air quality permitting fees. (1) All money collected by the department pursuant to 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter.

(2) The operating permit fees and the construction permit fees must be maintained in separate accounts within the state special revenue fund.

(3) Upon request, the expenditure by the department of funds in these accounts may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be borne by the person requesting the audit.

History: En. Sec. 13, Ch. 502, L. 1993.

75-2-222 through 75-2-229 reserved.

75-2-230. Commercial hazardous waste incinerators — additional permit requirements. (1) In addition to the requirements under 75-2-231, the department shall require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to submit a plan that requires the cessation of the burning of hazardous waste if site-specific monitoring determines that inversion conditions, as defined by department rule, exist. The department shall consider the proximity of the commercial hazardous waste incinerator to populated areas when determining the appropriate plan content. The plan must include a site-specific ambient air quality and meteorological monitoring program in order to establish the conditions under which the burning of commercial hazardous waste must be halted and conditions under which the burning of commercial hazardous waste may be resumed. Conditions of the plan must be incorporated as a condition of the facility's permit.

(2) When, because of the proximity of a commercial hazardous waste incinerator to populated areas, the department determines that continuing monitoring is appropriate, the department shall require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to provide telemetering service to the department with an immediate notification system activated when emissions approach or exceed permitted limits.

History: En. Sec. 1, Ch. 498, L. 1995.

75-2-231. Medical waste and hazardous waste incineration — additional permit requirements. (1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the board shall adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The board shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of chlorinated dioxins, furans, and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air pollutants;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high-quality scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including heavy metals and possible precursors to the formation of chlorinated dioxins, furans, and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans, heavy metals, and carcinogens for the affected communities.

(3) The department may not issue or alter an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as determined by the department after a review of established and relevant federal standards and guidelines.

(4) This section may not be construed in any way to:

(a) require the board to promulgate standards for the allowable intake of any substances for which the federal government has not established standards;

(b) allow the board to promulgate standards for the allowable intake of any substances for which the federal government has established standards that are more stringent than the federal standards; or

(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215.

History: En. Sec. 4, Ch. 639, L. 1993; amd. Sec. 2, Ch. 498, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-232. Disclosure statement required. (1) An air quality permit for a commercial medical waste or commercial hazardous waste incinerator may not be issued, transferred, or altered pursuant to 75-2-211 and 75-2-215 without an application under this section. Before an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator may be approved, the applicant and each principal with respect to the applicant shall submit to the department a disclosure statement containing the following information:

(a) the name, business address, and social security number of the applicant and each principal;

(b) a description of any civil and administrative complaint filed within 5 years before the date of the application against the applicant or a principal for the violation of an environmental protection law and whether the complaint resulted in a civil or administrative penalty;

(c) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application; and

(d) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application in another state that resulted from the operation of a medical waste incinerator or a commercial hazardous waste incinerator. For the purposes of this subsection (d), an environmental protection law of another state means a law or administrative rule adopted pursuant to a law regulating solid or hazardous waste or underground storage tanks or protecting the air or water resource.

(2) A disclosure statement, as required in subsection (1), must be executed under oath or affirmation and is subject to the penalty for perjury. The department may verify and investigate the information contained in a statement required under this section.

(3) A person required to file a disclosure statement under this section shall provide assistance or information requested by the department that is related to the statement and shall cooperate in an inquiry or investigation conducted by the department under subsection (2).

History: **En. Sec. 5, Ch. 639, L. 1993.**

75-2-233. Denial or modification of permit — mitigating factors. (1) The department may deny an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator or impose additional conditions on a permit pursuant to subsection (2) if within 5 years before the date of the application:

(a) a judgment of criminal conviction of an environmental protection law has been entered against the applicant or a principal;

(b) a civil or administrative complaint for a violation of an environmental protection law has resulted in the assessment of a penalty against the applicant or a principal;

(c) the applicant or a principal has a history of repeated violations of environmental protection laws; or

(d) a judgment or criminal conviction for a violation described in 75-2-232(1)(d) has been entered against the applicant or a principal.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the nature and gravity of the violation of environmental protection laws or violations described in 75-2-232(1)(d);

(b) the degree of culpability of the applicant or a principal;

(c) the applicant's or principal's cooperation with the state or federal agencies involved in the complaints and convictions referred to in 75-2-232; and

(d) the applicant's or principal's dissociation from other persons or entities convicted of acts referred to in 75-2-232.

History: **En. Sec. 6, Ch. 639, L. 1993.**

Part 3

Local Air Pollution Control

75-2-301. Local air pollution control programs. (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in subsection (4), the board by order may approve a local air pollution control program that:

(i) provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(b) Board approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-2-207.

(4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(5) If the board finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(6) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(7) If, after the hearing, the board determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(8) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(9) If the board finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at

the state level, it may direct the department to assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(10) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (8) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

(11) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

History: En. Sec. 16, Ch. 313, L. 1967; amd. Sec. 23, Ch. 349, L. 1974; R.C.M. 1947, 69-3919; amd. Sec. 5, Ch. 560, L. 1979; amd. Sec. 1, Ch. 141, L. 1991; amd. Sec. 19, Ch. 502, L. 1993; amd. Sec. 8, Ch. 471, L. 1995.

Cross-References

Montana Administrative Procedure Act — legislative review of rules — application, Title 2, ch. 4.

State regulations no more stringent than federal regulations or guidelines, 75-2-207.

75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant thereto shall be eligible for state aid in an amount up to 30% of the locally funded annual operating cost thereof.

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the board under 75-2-301.

History: En. Sec. 17, Ch. 313, L. 1967; R.C.M. 1947, 69-3920; amd. Sec. 2, Ch. 141, L. 1991.

Part 4

Enforcement, Appeal, and Penalties

75-2-401. Enforcement — notice — order for corrective action — administrative penalty. (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed a total of $80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider:

(i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;

(ii) the alleged violator's full compliance history and good faith efforts to comply;

(iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;

(iv) payment by the violator of penalties previously assessed for the same violation;

(v) the economic benefit of noncompliance;

(vi) the seriousness of the violation; and

(vii) other matters as justice may require.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

History: En. Sec. 11, Ch. 313, L. 1967; amd. Sec. 20, Ch. 349, L. 1974; amd. Sec. 6, Ch. 140, L. 1977; R.C.M. 1947, 69-3914; amd. Sec. 6, Ch. 560, L. 1979; amd. Sec. 1, Ch. 218, L. 1983; amd. Sec. 5, Ch. 502, L. 1993.

Cross-References

Montana Administrative Procedure Act — contested cases — application, Title 2, ch. 4, part 6.

Montana Administrative Procedure Act — judicial review of agency action, Title 2, ch. 4, part 7.

75-2-402. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the commencement of the hearing and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition such as that referred to in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or constitutional provisions or inheres in the office.

(4) Nothing in 75-2-205 may be construed to require a hearing before the issuance of an emergency order pursuant to this section.

History: (1) thru (3)En. Sec. 12, Ch. 313, L. 1967; amd. Sec. 21, Ch. 349, L. 1974; amd. Sec. 7, Ch. 140, L. 1977; Sec. 69-3915, R.C.M. 1947; (4)En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; Sec. 69-3917, R.C.M. 1947; R.C.M. 1947, 69-3915, 69-3917(2).

Cross-References

Declaration of emergency — authority of Governor, 10-3-104.

Local emergency — declaration, 10-3-402.

Energy emergencies — suspension of controls by Governor, 90-4-310.

75-2-403. Inspections. (1) The department or an authorized representative, for the purpose of ascertaining the state of compliance with this chapter or a rule, order, or permit in force under this chapter, may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which:

(a) an air contaminant source is located or is being constructed or installed;

(b) an emissions-related activity is conducted, such as air contaminant emissions or ambient concentration sampling, testing, or monitoring, or an activity in which samples are gathered, processed, or stored; or

(c) records are kept as required under this chapter or a rule, order, or permit made or issued under this chapter, for the purpose of inspecting those records. The authority granted under this subsection (c) does not limit the department's right to inspect any property, premises, or place, except a private residence, under subsections (1)(a) and (1)(b) if records are also kept at those sites.

(2) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials when the department requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) The department or an authorized representative must be provided access and must be allowed to copy, at reasonable times, any record that is required to be kept under this chapter or a rule, order, or permit made or issued under this chapter.

(4) The department or an authorized representative may inspect, at reasonable times, any facility, equipment, practices, or operations regulated or required under this chapter or a rule, order, or permit made or issued under this chapter.

(5) The department or an authorized representative must be allowed to sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the provisions of this chapter or a rule, order, or permit made or issued under this chapter.

(6) At the owner's or operator's request, the owner or operator of the premises shall receive a report stating all facts found that relate to compliance status.

(7) Inspections under this section must be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and with all source-specific facility workplace safety rules or requirements. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection.

History: En. Sec. 9, Ch. 313, L. 1967; amd. Sec. 19, Ch. 349, L. 1974; amd. Sec. 5, Ch. 140, L. 1977; R.C.M. 1947, 69-3912; amd. Sec. 2, Ch. 218, L. 1983; amd. Sec. 2, Ch. 85, L. 1995.

Cross-References

Searches and seizures — right of private individuals to be secure, Art. II, sec. 11, Mont. Const.

75-2-404 through 75-2-410 reserved.

75-2-411. Judicial review. (1) A person aggrieved by an order of the board or local control authority may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(a) the board or local control authority acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to him, which he could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(2) The petition must be in such form and filed in such time as the board shall prescribe.

(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, a party aggrieved thereby may appeal to the district court of the judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the chairman of the board, which service shall be made by the delivery of a copy of the notice to the chairman and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(4) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(3) thru (5).

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

75-2-412. Criminal penalties — injunction preserved. (1) A person is guilty of an offense under this section if that person knowingly:

(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

(b) makes a false material statement, representation, or certification on a form required under this chapter or in a notice or report required by a permit under this chapter; or

(c) renders inaccurate a monitoring device or method required under this chapter.

(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than $10,000 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified as a misdemeanor. Each day of each violation constitutes a separate violation.

(3) Fines collected under this section, except fines collected by an approved local air pollution control program, must be deposited in the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil or administrative remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

History: **En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; R.C.M. 1947, 69-3921(1) thru (3), (5); amd. Sec. 3, Ch. 218, L. 1983; amd. Sec. 42, Ch. 557, L. 1987; amd. Sec. 6, Ch. 502, L. 1993.**

Cross-References

Injunctions — Supreme Court jurisdiction, 3-2-205.

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Injunctions, Title 27, ch. 19.

Execution of fine, 46-19-102.

75-2-413. Civil penalties — out-of-state litigants — effect of action — presumption of continuing violation under certain circumstances. (1) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed $10,000 per violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under this chapter by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

(4) Money collected under this section must be deposited in the state general fund. This subsection does not apply to money collected by an approved local air pollution control program.

History: **En. 69-3921.1 by Sec. 1, Ch. 98, L. 1975; amd. Sec. 2, Ch. 308, L. 1977; R.C.M. 1947, 69-3921.1; amd. Sec. 16, Ch. 560, L. 1979; amd. Sec. 4, Ch. 218, L. 1983; amd. Sec. 7, Ch. 502, L. 1993; amd. Sec. 3, Ch. 85, L. 1995; amd. Sec. 3, Ch. 498, L. 1995.**

Cross-References

Duties related to state matters, 7-4-2716.

Injunctions, Title 27, ch. 19.

75-2-414 through 75-2-420 reserved.

75-2-421. Persons subject to noncompliance penalties — exemptions. (1) Except as provided in subsection (2), the department may assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419) that is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, 7412, 7477, or 7603;

(c) a stationary source that is not in compliance with any other requirement under this chapter or any requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or

(d) any source referred to in subsections (1)(a), (1)(b), or (1)(c) that has been granted an exemption, extension, or suspension under subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if that source is not in compliance with any interim emission control requirement or schedule of compliance under the extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance that:

(a) the department finds is de minimis in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds for it, a hearing before the board. A hearing must be held under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

History: En. Sec. 7, Ch. 560, L. 1979; amd. Sec. 8, Ch. 502, L. 1993.

Cross-References

Montana Administrative Procedure Act — hearing, 2-4-612.

75-2-422. Amount of noncompliance penalty — late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source under 75-2-421 through 75-2-429 shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for such quarter from the costs under subsection (1)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does not submit a timely petition under 75-2-425(2)(b) or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421 through 75-2-429 on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

History: En. Sec. 8, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4, part 2.

75-2-423. Manner of making payment. (1) The assessed penalty required under 75-2-421 through 75-2-429 shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under 75-2-422(1)(b), after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under 75-2-425 with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under 75-2-425 and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

History: En. Sec. 9, Ch. 560, L. 1979.

75-2-424. Adjustment of fee. (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under 75-2-425(2)(a) if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of 75-2-421 through 75-2-429.

(2) Upon making a determination that a source with respect to which a penalty has been paid under 75-2-421 through 75-2-429 is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

History: En. Sec. 10, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — hearing procedure, Title 2, ch. 4, part 6.

75-2-425. Notice of noncompliance — challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-421(1) which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

History: En. Sec. 11, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — hearing procedure, Title 2, ch. 4, part 6.

75-2-426. Hearing on challenge. (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under 75-2-425(2)(b) with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the department within 45 days of the date of decision.

History: En. Sec. 12, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — applicability, Title 2, ch. 4, part 6.

75-2-427. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to 75-2-421 through 75-2-429 shall be deposited in the state special revenue fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the state general fund.

History: En. Sec. 13, Ch. 560, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Fund structure, 17-2-102.

75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the board under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

History: En. Sec. 14, Ch. 560, L. 1979.

75-2-429. Effect of noncompliance penalty on other remedies. (1) Any orders, payments, sanctions, or other requirements under 75-2-421 through 75-2-428 shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter and shall in no way affect any civil or criminal enforcement proceedings brought under 75-2-412 or 75-2-413.

(2) The noncompliance penalties collected pursuant to 75-2-421 through 75-2-428 are intended to be cumulative and in addition to any other remedies, procedures, and requirements authorized by this chapter.

History: En. Sec. 15, Ch. 560, L. 1979.

Part 5
Asbestos Control

Part Cross-References

Asbestos regulation in building construction and demolition, Title 50, ch. 64, part 1.

75-2-501. Short title. This part may be cited as the "Asbestos Control Act".

History: En. Sec. 1, Ch. 581, L. 1989.

75-2-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Accreditation" means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) "Asbestos project" means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of asbestos-containing waste. The term does not include a project that involves less than 3 square feet in surface area or 3 linear feet of pipe.

(4) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity.

History: En. Sec. 2, Ch. 581, L. 1989; amd. Sec. 179, Ch. 418, L. 1995.

75-2-503. Rulemaking authority — issuance of permits. (1) The department shall, subject to the provisions of 75-2-207, adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

(a) standards for training course review and approval;

(b) standards for accreditation of applicants for asbestos-related occupations;

(c) examination requirements for accreditation of applicants for asbestos-related occupations;

(d) requirements for renewal of accreditation, including periodic refresher courses;

(e) revocation of accreditation;

(f) inspection requirements for asbestos projects and asbestos-related occupations credentials;

(g) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

(h) requirements for issuance of asbestos project permits and conditions that permitholders shall meet;

(i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

(j) advance notification procedures and issuance of permits for asbestos projects; and

(k) fees, which must be commensurate with costs, for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance of asbestos project permits; and

(iv) requested inspections of asbestos projects.

(2) For asbestos projects having a cost of $3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee.

History: En. Sec. 3, Ch. 581, L. 1989; amd. Sec. 51, Ch. 16, L. 1991; amd. Sec. 9, Ch. 471, L. 1995.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-504. Facility permits — fee. (1) The department shall provide by rule a procedure for the issuance of an annual asbestos project permit to any facility that has an asbestos health and safety program meeting department criteria and that continuously employs accredited asbestos workers. This permit allows a facility to conduct asbestos projects within the confines of the facility's controlled area during the period for which the permit is in force. The provisions of this permit may not preclude state and federal requirements for asbestos project notification.

(2) The fee for a facility permit must reflect the actual cost of the department's application review, permit issuance, and facility inspections.

History: En. Sec. 4, Ch. 581, L. 1989.

75-2-505 through 75-2-507 reserved.

75-2-508. Asbestos control account. (1) There is an asbestos control account in the state special revenue fund. There must be deposited in the account all money received from:

(a) fees collected under this part; and

(b) civil penalties collected pursuant to 75-2-514.

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the asbestos control program established under this part.

History: En. Sec. 1, Ch. 596, L. 1991.

75-2-509 and 75-2-510 reserved.

75-2-511. Accreditation requirements — restrictions. (1) To qualify for accreditation in a particular asbestos-related occupation, a person must:

(a) (i) successfully complete an asbestos-related training course for that occupation approved by the department or the United States environmental protection agency; and

(ii) pass an examination approved by the department;

(b) satisfactorily demonstrate equivalent previous training or experience in the occupation as prescribed by department rule; or

(c) have successfully completed an asbestos-related training course for that occupation, approved by the United States environmental protection agency, during the time period immediately following the passage of this part and ending on December 31, 1989.

(2) After January 1, 1990, a person may not:

(a) engage in an asbestos-related occupation unless accredited in that occupation by the department;

(b) conduct an asbestos project without a permit from the department or violate the conditions of a permit;

(c) contract with or employ in an asbestos-related occupation a person not accredited in that occupation by the department; or

(d) offer a training course for an asbestos-related occupation to meet the accreditation requirements of this section unless the department approves the course.

(3) A person who applies for accreditation shall submit the fees and follow procedures prescribed by department rule.

History: **En. Sec. 5, Ch. 581, L. 1989.**

75-2-512. Repealed. Sec. 3, Ch. 596, L. 1991.

History: **En. Sec. 6, Ch. 581, L. 1989.**

75-2-513. Records. A person engaged in an asbestos project shall maintain the records required by department rule concerning the nature of project activities.

History: **En. Sec. 7, Ch. 581, L. 1989.**

75-2-514. Criminal and civil penalties — disposition of civil penalties. (1) The department may suspend, deny, or revoke the accreditation of or reprimand a person who:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or comply with the requirements of this part or any rule adopted by the department; or

(c) fails to meet any applicable federal or state standard for asbestos projects.

(2) Notwithstanding the provisions of any other law, a person who purposely or knowingly violates any provision of this part or an adopted rule or order issued pursuant to this part is guilty of a misdemeanor.

(3) If the department determines that a violation of this part or a rule promulgated pursuant to this part has occurred, it may issue an order compelling the person receiving the order to end the violation immediately.

(4) In addition to or instead of the remedies listed in subsections (1) through (3), an accredited person who purposely or knowingly violates this part or a rule adopted pursuant to this part that concerns the conduct of an asbestos project may be assessed a civil penalty by the district court of not more than

$1,000 a day for an initial violation and $5,000 a day for each subsequent violation occurring within a 3-year period from the date of the initial violation.

(5) A district court may assess a civil penalty of not more than $25,000 a day upon a person who engages in an asbestos project without valid accreditation or a permit. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(6) Civil penalties collected under this part must be deposited into the account established in 75-2-508.

History: **En. Sec. 9, Ch. 581, L. 1989; amd. Sec. 2, Ch. 596, L. 1991.**

CHAPTER 3

RADON CONTROL

Part 1 — General Provisions
(Renumbered. Sec. 13, Ch. 73, L. 1997)

Part 2 — Control of Radioactive Substances
(Renumbered. Sec. 13, Ch. 73, L. 1997)

Part 3 — Disposal of Large Quantities of Radioactive Material
(Renumbered. Sec. 13, Ch. 73, L. 1997)

Part 4 — Enforcement, Appeal, and Penalties
(Renumbered. Sec. 13, Ch. 73, L. 1997)

Part 5 — Northwest Interstate Compact on Low-Level Radioactive Waste Management
(Renumbered. Sec. 13, Ch. 73, L. 1997)

Part 6 — Montana Radon Control Act

75-3-601. Short title.
75-3-602. Definitions.
75-3-603. Radon testing and mitigation proficiency listing requirements.
75-3-604. Voluntary disclosure of information to department.
75-3-605. Public information and education.
75-3-606. Radon disclosure statement on real estate documents — disclosure of prior radon testing — immunity from liability.
75-3-607. Radon control account.

Part 1

General Provisions

(Renumbered. Sec. 13, Ch. 73, L. 1997)

Part Compiler's Comments

Sections Renumbered:

75-3-101. Renumbered 50-79-101. Sec. 13, Ch. 73, L. 1997.

75-3-102. Renumbered 50-79-102. Sec. 13, Ch. 73, L. 1997.

75-3-103. Renumbered 50-79-103. Sec. 13, Ch. 73, L. 1997.

75-3-104. Renumbered 50-79-104. Sec. 13, Ch. 73, L. 1997.

75-3-105. Renumbered 50-79-105. Sec. 13, Ch. 73, L. 1997.

75-3-106. Renumbered 50-79-106. Sec. 13, Ch. 73, L. 1997.

75-3-107. Renumbered 50-79-107. Sec. 13, Ch. 73, L. 1997.

75-3-108. Renumbered 50-79-108. Sec. 13, Ch. 73, L. 1997.

Part 2

Control of Radioactive Substances (Renumbered. Sec. 13, Ch. 73, L. 1997)

Part Compiler's Comments
Sections Renumbered:
75-3-201. Renumbered 50-79-201. Sec. 13, Ch. 73, L. 1997.
75-3-202. Renumbered 50-79-202. Sec. 13, Ch. 73, L. 1997.
75-3-203. Renumbered 50-79-203. Sec. 13, Ch. 73, L. 1997.
75-3-204. Renumbered 50-79-204. Sec. 13, Ch. 73, L. 1997.

Part 3

Disposal of Large Quantities of Radioactive Material (Renumbered. Sec. 13, Ch. 73, L. 1997)

Part Compiler's Comments
Sections Renumbered:
75-3-301. Renumbered 50-79-301. Sec. 13, Ch. 73, L. 1997.
75-3-302. Renumbered 50-79-302. Sec. 13, Ch. 73, L. 1997.
75-3-303. Renumbered 50-79-303. Sec. 13, Ch. 73, L. 1997.
75-3-304. Renumbered 50-79-304. Sec. 13, Ch. 73, L. 1997.

Part 4

Enforcement, Appeal, and Penalties (Renumbered. Sec. 13, Ch. 73, L. 1997)

Part Compiler's Comments
Sections Renumbered:
75-3-401. Renumbered 50-79-401. Sec. 13, Ch. 73, L. 1997.
75-3-402. Renumbered 50-79-402. Sec. 13, Ch. 73, L. 1997.
75-3-403. Renumbered 50-79-403. Sec. 13, Ch. 73, L. 1997.
75-3-404. Renumbered 50-79-404. Sec. 13, Ch. 73, L. 1997.
75-3-405. Renumbered 50-79-405. Sec. 13, Ch. 73, L. 1997.
75-3-406. Renumbered 50-79-406. Sec. 13, Ch. 73, L. 1997.
75-3-407. Renumbered 50-79-407. Sec. 13, Ch. 73, L. 1997.
75-3-408 and 75-3-409 reserved.
75-3-410. Renumbered 50-79-410. Sec. 13, Ch. 73, L. 1997.

Part 5

Northwest Interstate Compact on Low-Level Radioactive Waste Management (Renumbered. Sec. 13, Ch. 73, L. 1997)

Part Compiler's Comments
Sections Renumbered:
75-3-501. Renumbered 50-79-501. Sec. 13, Ch. 73, L. 1997.
75-3-502. Renumbered 50-79-502. Sec. 13, Ch. 73, L. 1997.

Part 6

Montana Radon Control Act

75-3-601. Short title. This part may be cited as the "Montana Radon Control Act".

History: En. Sec. 1, Ch. 527, L. 1993.

75-3-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of environmental quality.

(2) "Inhabitable real property" means any real property that includes a building affixed to land. The building must be designed to be primarily occupied by humans, either as a dwelling or as a place of business.

(3) "Mitigation project" means to repair or alter a building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(4) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

(5) "Radon" means any of the gaseous radioactive decay products of uranium or thorium.

(6) "Radon progeny" means any of the radioactive decay products of radon.

(7) "Radon-related occupation" means the occupation of any person who performs radon gas or radon progeny measurements, including sample collection, analysis, or interpretation of those measurements, or who performs radon gas or radon progeny mitigation.

History: En. Sec. 2, Ch. 527, L. 1993; amd. Sec. 1, Ch. 185, L. 1995; amd. Sec. 183, Ch. 418, L. 1995.

75-3-603. Radon testing and mitigation proficiency listing requirements. In order to be publicly listed as proficient by the department in a radon-related occupation, a person shall pass a United States environmental protection agency proficiency examination approved by the department.

History: En. Sec. 3, Ch. 527, L. 1993.

75-3-604. Voluntary disclosure of information to department. (1) The results of measurements of radon gas or radon progeny performed by a person may be reported to the department. The report may include the radon levels detected and the location and description of the building.

(2) Except for use in conducting legitimate scientific studies, as determined by the department, data and information relating to radon gas and radon progeny contamination at nonpublic properties, including residential dwellings, gathered under this part must be considered confidential by the department. The department shall provide the bureau of mines and geology with all information received by the department under subsection (1) for conducting legitimate scientific studies. The department may not release the data or information in its possession to anyone other than the owner or occupant of the property.

History: En. Sec. 4, Ch. 527, L. 1993.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

75-3-605. Public information and education. The department shall initiate and administer a program designed to educate and inform the public concerning radon gas and radon progeny. The program must include but is not limited to:

(1) public presentations to interested parties;

(2) developing, reproducing, and distributing printed materials to homeowners and other interested groups;

(3) responding to telephone inquiries on a maintained toll-free telephone number;

(4) providing technical and training information for radon measurement and mitigation;

(5) maintaining and distributing lists of qualified persons who perform measurement and mitigation services;

(6) developing and implementing an effective communication strategy to encourage all homeowners to test for radon; and

(7) encouraging cooperative partnerships to promote radon testing of buildings and homes.

History: **En. Sec. 5, Ch. 527, L. 1993.**

75-3-606. Radon disclosure statement on real estate documents — disclosure of prior radon testing — immunity from liability. (1) A radon disclosure statement must be provided on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase and sale of inhabitable real property. The seller or seller's agent shall provide the following disclosure statement to the buyer, and the buyer shall acknowledge receipt of this disclosure statement by signing a copy of the disclosure statement:

"RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT."

(2) Whenever a seller knows that a building has been tested for radon gas and radon progeny, the seller shall provide to the buyer, prior to or upon entry into a contract for the purchase of that building, a copy of the results of that test and evidence of any subsequent mitigation or treatment. A prospective buyer who contracts for the testing may receive the results of that testing. The furnishing of test results and evidence of mitigation or treatment is not to be construed as a promise, warranty, or representation of any sort by the seller or the seller's agent that the test results are accurate or that the mitigation or treatment is effective. This section does not create a contingency on the purchase of the property or any right to rescind a contract for purchase unless the contingency or right to rescind is an express term of the applicable contract.

(3) A seller or seller's agent who complies with subsections (1) and (2) is not liable in any action based on the presence of radon gas or radon progeny in the building.

History: **En. Sec. 6, Ch. 527, L. 1993; amd. Sec. 2, Ch. 185, L. 1995.**

75-3-607. Radon control account. (1) There is a radon control account in the state special revenue fund. There must be deposited in the account all money received from any loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of this part that are received from the federal government and from other sources, public or private.

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the program established under this part.

History: En. Sec. 7, Ch. 527, L. 1993.

CHAPTER 4

RESERVED

CHAPTER 5

WATER QUALITY

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Chapter Cross-References

The Municipal Revenue Bond Act of 1939, Title 7, ch. 7, part 44.

Metropolitan sanitary and storm sewer district, Title 7, ch. 13, part 1.

County water and sewer districts, Title 7, ch. 13, part 22.

Public sewer systems, Title 7, ch. 13, part 42.

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Part 1

General Provisions

75-5-101. Policy. It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution.

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(1).

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-5-102. Purpose — rights of action not abridged. (1) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of his rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(4).

Cross-References

Indemnification against loss to environment, Title 15, ch. 38.

75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(5) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(10) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(11) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(12) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(13) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(16) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(18) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(20) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(22) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(23) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(24) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(25) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(26) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(28) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(29) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(31) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level

necessary to achieve compliance with applicable surface water quality standards.

(33) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(34) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(35) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(37) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

History: En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973; amd. Sec. 59, Ch. 349, L. 1974; amd. Sec. 2, Ch. 455, L. 1975; amd. Sec. 3, Ch. 308, L. 1977; amd. Sec. 1, Ch. 444, L. 1977; R.C.M. 1947, 69-4802; amd. Sec. 1, Ch. 337, L. 1993; amd. Sec. 1, Ch. 340, L. 1993; amd. Sec. 1, Ch. 595, L. 1993; amd. Sec. 184, Ch. 418, L. 1995; amd. Sec. 1, Ch. 495, L. 1995; amd. Sec. 3, Ch. 497, L. 1995; amd. Sec. 1, Ch. 501, L. 1995; amd. Secs. 524, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 541, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 541 inserted definitions of currently available data, impaired water body, load allocation, loading capacity, sufficient credible data, threatened water body, total maximum daily load, waste load allocation, and watershed advisory group; and made minor changes in style. Amendment effective May 5, 1997.

75-5-104. Special applicability. This chapter applies to drainage or seepage from all sources, including that from artificial, privately owned ponds or lagoons, if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

History: En. Sec. 124, Ch. 197, L. 1967; amd. Sec. 3, Ch. 21, L. 1971; R.C.M. 1947, 69-4804.

Cross-References

Waters property of state, Art. IX, sec. 3, Mont. Const.

75-5-105. Confidentiality of records. Except as provided in 80-15-108, any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department shall be served in any such action and may intervene as a party therein. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section.

History: En. Sec. 16, Ch. 21, L. 1971; amd. Sec. 10, Ch. 455, L. 1975; R.C.M. 1947, 69-4822; amd. Sec. 25, Ch. 668, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

75-5-106. Interagency cooperation — enforcement authorization. (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts.

History: En. Sec. 21, Ch. 21, L. 1971; R.C.M. 1947, 69-4827; amd. Sec. 25, Ch. 357, L. 1991; amd. Sec. 4, Ch. 497, L. 1995.

Part 2
Administrative Agencies

75-5-201. Board rules authorized. (1) The board shall, subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(g); amd. Sec. 1, Ch. 504, L. 1993; amd. Sec. 11, Ch. 471, L. 1995.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Local boards of health — powers and duties, 50-2-116.

75-5-202. Board hearings. The board shall hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(f).

Cross-References

Montana Administrative Procedure Act — contested case hearings, Title 2, ch. 4, part 6.

75-5-203. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 1, Ch. 471, L. 1995.

75-5-204 through 75-5-210 reserved.

75-5-211. Department to administer chapter. (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use its personnel and those of the local departments of health as necessary to administer this chapter.

History: En. Sec. 125, Ch. 197, L. 1967; amd. Sec. 4, Ch. 21, L. 1971; amd. Sec. 60, Ch. 349, L. 1974; R.C.M. 1947, 69-4805.

Cross-References

Department of Public Health and Human Services — rules regarding water and sewage requirements for hotels, 50-51-103.

75-5-212. Department research and information. The department shall:

(1) collect and furnish information relating to the prevention and control of water pollution;

(2) conduct or encourage necessary research and demonstrations concerning water pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(d), (1)(e).

75-5-213. Comprehensive plan for prevention and control of water pollution. The department shall advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(h).

75-5-214 through 75-5-220 reserved.

75-5-221. Water pollution control advisory council — general. (1) The council provided for in 2-15-2107 shall select a presiding officer from among its members. The director of the department of environmental quality shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) Meetings must be held at the call of the presiding officer or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform the member's duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution.

(5) The director of the department may designate other persons to participate with council members in evaluating particular issues arising under this chapter that are brought before the council.

History: En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971; amd. Sec. 64, Ch. 349, L. 1974; R.C.M. 1947, 69-4812; amd. Sec. 1, Ch. 297, L. 1995; amd. Sec. 185, Ch. 418, L. 1995.

Part 3
Classification and Standards

Part Cross-References

Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens. However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate as nitrogen sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(part); amd. Sec. 26, Ch. 668, L. 1989; amd. Sec. 2, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993; amd. Sec. 5, Ch. 497, L. 1995; amd. Sec. 4, Ch. 501, L. 1995; amd. Sec. 1, Ch. 539, L. 1995; amd. Sec. 1, Ch. 40, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 40 in (5)(d), in two places, in (5)(d)(i), and in (5)(d)(iv), after "nitrate", legislatively adopted the phrase "as nitrogen" inserted as a comment by the Code Commissioner in 1995. Amendment effective March 12, 1997.

Retroactive Applicability: Section 3, Ch. 40, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to April 4, 1995."

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-5-302. Revised classifications not to lower water quality standards — exception. (1) Except as provided in subsection (2), in revising classifications or standards or in adopting new classifications or standards, the board may not formulate standards of water quality or classify state water in a manner that lowers the water quality standard applicable to state water below the level applicable under the classifications and standards adopted unless the board finds that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307. When the board or department is presented with facts indicating that a body of water is misclassified, the board shall, within 90 days, initiate rulemaking to correct the misclassification.

(2) Establishment of a temporary water quality standard or classification does not require a finding that the affected state water was classified under a standard or classification that was higher than the actual water quality that existed at the time of the prior classification.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(i); amd. Sec. 6, Ch. 497, L. 1995; amd. Sec. 2, Ch. 539, L. 1995.

75-5-303. Nondegradation policy. (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under 75-5-317, the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review authorizations to degrade state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the

authorization if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify an authorization may be appealed to the board.

(7) The board may not issue an authorization to degrade state waters that are classified as outstanding resource waters.

(8) The board shall adopt rules to implement this section.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(ii), (1)(c)(iii); amd. Sec. 3, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993; amd. Sec. 2, Ch. 495, L. 1995; amd. Sec. 5, Ch. 501, L. 1995.

Cross-References

Outstanding resource water classification, 75-5-316.

Nonsignificant activities, 75-5-317.

Action for damage to water supply caused by metal mining operation, 82-4-355.

75-5-304. Adoption of standards — pretreatment, effluent, performance. (1) The board shall:

(a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;

(b) adopt effluent standards as defined in 75-5-103;

(c) adopt toxic effluent standards and prohibitions; and

(d) establish standards of performance for new point source discharges.

(2) In taking action under subsection (1), the board shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(h); amd. Sec. 7, Ch. 497, L. 1995.

75-5-305. Adoption of requirements for treatment of wastes — variance procedure — appeals. (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe

the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(b); amd. Sec. 1, Ch. 479, L. 1991; amd. Sec. 8, Ch. 497, L. 1995.

75-5-306. Purer than natural unnecessary — dams. (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met.

(2) "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at July 1, 1971, are natural.

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(2).

75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1) Before streams are classified or standards established or modified or rules made, revoked, or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified shall be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611.

History: En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971; R.C.M. 1947, 69-4814.

Cross-References

Montana Administrative Procedure Act — rulemaking, 2-4-302.

75-5-308. Short-term water authorizations — water quality standards. The department may authorize short-term exemptions from the water quality standards or short-term use that exceeds the water quality standards for the purposes of allowing construction, emergency environmental remediation, pesticide application, elimination of undesirable and nonnative aquatic species, and treatment of water for the protection of public health. The authorization must include conditions that minimize to the extent possible the magnitude of any standard violation and the length of time during which any standard violation may occur. The authorization conditions must maximize the protection of state waters by ensuring the maintenance of beneficial uses immediately after the term of the authorization. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

History: En. Sec. 2, Ch. 340, L. 1993.

75-5-309. Standards more stringent than federal standards. (1) In adopting rules to implement this chapter, the board may adopt rules that are more stringent than corresponding draft or final federal regulations, guidelines, or criteria if the board makes written findings, based on sound scientific or technical evidence in the record, which state that rules that are more stringent than corresponding federal regulations, guidelines, or criteria are necessary to protect the public health, beneficial use of water, or the environment of the state.

(2) The board's written findings must be accompanied by a board opinion referring to and evaluating the public health and environmental information and studies contained in the record that forms the basis for the board's conclusion.

History: En. Sec. 1, Ch. 497, L. 1995.

75-5-310. Site-specific standards of water quality for aquatic life. (1) Notwithstanding any other provisions of this chapter and except as provided in subsection (2), the board, upon application by a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical, and available site-specific evidence.

History: En. Sec. 2, Ch. 497, L. 1995.

75-5-311. Local water quality districts — board approval — local water quality programs. (1) A county that establishes a local water quality district according to the procedures specified in Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the board after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the board shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the board's approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

(a) onsite waste water disposal facilities;

(b) storm water runoff from paved surfaces;

(c) service connections between buildings and publicly owned sewer mains;

(d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

(iii) provide for civil penalties not to exceed $1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed $500 per day of violation or imprisonment for not more than 30 days, or both.

(b) Board approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-5-203.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the board has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the board and obtain the board's approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.

(9) If the board determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice and conduct a hearing on the matter.

(10) If after the hearing the board determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the board finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the board may direct the department to assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made

under this subsection may be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located.

History: En. Sec. 24, Ch. 357, L. 1991; amd. Sec. 12, Ch. 471, L. 1995.

Cross-References

Pesticides, Title 80, ch. 8.

Montana Agricultural Chemical Ground Water Protection Act, Title 80, ch. 15.

75-5-312. Temporary water quality standards. (1) The board may on its own, upon recommendation of the department, or upon a petition for rulemaking by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific water body or segment on a parameter-by-parameter basis in those instances in which substantive information indicates that the water body or segment is not supporting its designated uses. When the board adopts temporary standards, the goal is to improve water quality to the point at which an additional beneficial use or uses are supported.

(2) As a condition for establishing temporary water quality standards for a particular water body or segment, the department or the petitioner, as applicable, shall prepare a support document and implementation plan for use by the board in determining whether to adopt a proposed temporary water quality standard.

(3) If a person petitions for rulemaking under this section, the petition must specifically describe the affected state water, the existing ambient water quality for the parameter or parameters at issue, the water quality standard or standards affected, and the temporary modifications sought. Within 180 days after the board grants a petition to initiate rulemaking, the petitioner shall prepare and submit to the board and the department a proposed support document and implementation plan that sets forth:

(a) the water quality limiting factors affecting the water body or segment;

(b) the existing beneficial use or uses and the beneficial use or uses considered attainable in the absence of the water quality limiting factors;

(c) an implementation plan to eliminate the water quality limiting factors to the extent considered achievable; and

(d) a schedule for implementing the plan that ensures that the water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable and in no event later than the time allowed by the board in the temporary standard.

(4) Upon the board's adoption of a temporary water quality standard, the department shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation plan are established in appropriate discharge permits.

(5) (a) A temporary modification of a water quality standard may not result in adverse impacts to existing beneficial uses or be established for a total period longer than 20 years.

(b) During the period of the temporary modification, the board may not allow a discharge that will cause overall water quality to become worse than the overall quality of the water body or segment prior to the discharge.

(6) If a state water is designated as having temporary standards, the department shall report to the board at least every 3 years or upon request of

the board regarding whether adequate efforts have been made to implement the plans submitted as the basis for the temporary standard.

(7) The board shall review temporary standards at least every 3 years at a public hearing for which notice and an opportunity for comment have been provided. The board may terminate the temporary standard based on information submitted at the time of its review that the applicant is not complying with the approved implementation plan.

(8) The board shall terminate a temporary standard for a parameter if:

(a) values for the modified parameter or parameters improve to conditions that support all designated uses for that classification;

(b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-302; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the board or department.

(9) The board may modify the plan if the permittee submits convincing evidence to the board that the plan needs modification. The board may not extend the plan beyond a total period of 20 years.

(10) If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the board or department, a person may request a new temporary standard by submitting both a petition for rulemaking and a plan that meet the requirements of subsections (2) and (3). However, the board may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water.

History: En. Sec. 3, Ch. 539, L. 1995.

75-5-313 and 75-5-314 reserved.

75-5-315. Outstanding resource waters — statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection and to provide guidance to the board in establishing rules to accomplish that level of protection.

History: En. Sec. 2, Ch. 501, L. 1995.

75-5-316. Outstanding resource water classification — rules — criteria — limitations — procedure. (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters. Neither this section nor rules adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c) and that is exempted from nondegradation review required under 75-5-303.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters.

History: En. Sec. 3, Ch. 501, L. 1995.

Cross-References

Nondegradation policy, 75-5-303.

75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(j) discharges of water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(k) oil and gas drilling, production, abandonment, plugging, and restoration activities performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(l) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(m) coal and uranium prospecting performed in accordance with Title 82, chapter 4;

(n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(o) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(p) metallic and nonmetallic mineral exploration permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(q) nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:

(i) activities authorized under Title 75, chapter 7, part 1; or

(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law;

(r) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

(s) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c).

History: En. Sec. 6, Ch. 501, L. 1995.

Cross-References

Nondegradation policy, 75-5-303.

Part 4

Permits

75-5-401. Board rules for permits — ground water exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state surface waters and ground waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(d), (1)(e); amd. Sec. 1, Ch. 412, L. 1991; amd. Sec. 2, Ch. 297, L. 1995; amd. Sec. 9, Ch. 497, L. 1995; amd. Sec. 1, Ch. 582, L. 1995.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Department and Board permits required for facility siting, 75-20-211.

Dairy products manufacturing plant — approval of air pollutant control by Department of Environmental Quality, 81-22-403.

Mining permit denied if water pollution not prevented, 82-4-227.

Mining reclamation plan to include water pollution control, 82-4-231.

75-5-402. Duties of department. The department shall:

(1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the board;

(2) examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(3) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged; and

(4) establish as conditions to the issuance of permits for which a performance bond or other surety is filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and after operation of the project or activity for which a permit is issued.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(a) thru (1)(c); amd. Sec. 2, Ch. 412, L. 1991.

75-5-403. Denial or modification of permit — time for review of permit application. (1) The department shall review for completeness all applications for new permits within 60 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all major deficiency issues, based on the information submitted. The department and the applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.

(2) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and the applicant or holder may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. The hearing must be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, an order modifying the permit is not effective until 20 days after receipt of notice of the action of the board.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(1); amd. Sec. 10, Ch. 497, L. 1995.

75-5-404. Suspension or revocation of permit — procedure. If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately if the department finds that the violation is likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately unless the board directs otherwise.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(2).

75-5-405. Voluntary filing of performance bond — terms — hearing. (1) A person who holds or has applied for a permit pursuant to 75-5-401 may voluntarily file a performance bond or other surety with the department for an amount sufficient to enable the state to reclaim the land disturbed by the project or activity authorized by the permit in accordance with all permit requirements and as needed to prevent pollution of state waters.

(2) If the department determines that the bonding level does not represent the present cost of reclaiming the disturbed land according to the reclamation requirements specified in the permit and the present cost of preventing pollution of state waters, the department shall notify the permittee and the permittee may modify the amount of the bond to accurately reflect the present cost.

(3) The department may not release all or any portion of a performance bond or other surety filed pursuant to this section until reclamation of the disturbed land has been completed to the satisfaction of the department and the department has determined that pollution of state waters has not occurred. The department may initiate bond forfeiture proceedings if the permittee fails to satisfactorily reclaim the disturbed land or prevent pollution of state waters.

(4) The department may not release a bond or other surety filed pursuant to this section until the public has been provided an opportunity for a hearing.

History: En. Sec. 3, Ch. 412, L. 1991.

Part 5
Financial Provisions

75-5-501. Board to control state matching funds for construction of water pollution control facilities. (1) The board shall control funds appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities.

(2) The board shall adopt rules and establish standards for the use of such matching funds by local governments in the planning and construction of local water pollution control facilities.

(3) Funds appropriated under this section shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and may not exceed 25% of the total cost of the project as participated in by the federal water pollution control administration.

History: En. Sec. 1, Ch. 165, L. 1969; amd. Sec. 61, Ch. 349, L. 1974; R.C.M. 1947, 69-4808.1.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-5-502. Board authorized to accept loans and grants. The board may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(a).

75-5-503. Department authorized to accept loans and grants. The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(2).

75-5-504 through 75-5-506 reserved.

75-5-507. Repealed. Sec. 82, Ch. 509, L. 1995.
History: En. Sec. 1, Ch. 600, L. 1991.

75-5-508 through 75-5-510 reserved.

75-5-511. Sewage system operators authorized to adopt charges and rates for users. (1) A municipality or other entity operating a sewage system may adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance, and replacement of any treatment works facilities or services provided by the municipality or other entity.

(2) A municipality or other entity operating a sewage system may require industrial users of its treatment works to pay to the municipality or other entity that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's wastes. The department may determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(1), (2).

75-5-512. Uses allowed for revenues. A municipality or other entity operating a sewage system may retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(1) repayment to applicable agencies of government of any grants or loans made to the municipality or other entity operating a sewage system for construction of the treatment works;

(2) future expansion and reconstruction of the treatment works; and

(3) other municipal purposes.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(3).

75-5-513. Sewage system operators to keep records — department's power to inspect and audit. A municipality or other entity operating sewage systems shall keep records, financial statements, and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The department may inspect such records, financial statements, and books, audit them or cause them to be audited at such intervals as deemed necessary.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(4).

75-5-514. When board to establish rates and collect charges. (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the board may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(5), (6).

75-5-515. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage systems or, if applicable, the board shall consider the strength, volume, types, and delivery flow rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and such other factors as deemed necessary.

History: En. 69-4808.5 by Sec. 15, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.5.

75-5-516. Fees authorized for recovery — process — rulemaking. (1) The board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board's and department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) The rules promulgated by the board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to board rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to board rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(a) the fees collected under subsection (2)(a);

(b) state general fund appropriations for functions administered under this chapter; and

(c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed at the rate established under 15-31-510; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (7). The appeal to the board must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

History: En. Sec. 1, Ch. 507, L. 1993; amd. Sec. 3, Ch. 297, L. 1995; amd. Sec. 6, Ch. 51, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 51 in (5)(a) substituted "15-31-510" for "15-31-510(3)". Amendment effective March 13, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-5-517. Disposition of water quality permit fees. (1) All fees collected under 75-5-516 must be credited to an account in the state special revenue fund.

(2) Money in the account may be used only to pay the department's cost in implementing the functions described in 75-5-516(1).

History: En. Sec. 2, Ch. 507, L. 1993.

Part 6

Enforcement, Appeal, and Penalties

Part Cross-References

Action for damage to water supply caused by metal mining operation, 82-4-355.

75-5-601. Cleanup orders. (1) The department may issue an order to a person to clean up any material that the person or the person's employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may pollute state waters.

(2) If a unit of state or local government, including but not limited to a local board of health, county commission, governing body of a municipality, or state agency, has granted a permit or license to a person to discharge waste or has otherwise authorized an activity that involves the placement of waste and the department has reason to believe that the waste is causing or is likely to cause pollution of state waters, the department may issue an order to the unit of state or local government to take measures to ensure that the wastes causing or likely to cause the pollution are cleaned up.

(3) The department may include in an order issued to a county commission pursuant to subsection (2) a request that the commission create a sewer district in the geographic area affected by the order for the purpose of establishing a public sewer system in accordance with the petition and election procedures provided by 7-13-2204 and 7-13-2208 through 7-13-2214.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(f); amd. Sec. 1, Ch. 292, L. 1991; amd. Sec. 4, Ch. 297, L. 1995.

75-5-602. Power to require monitoring. In order to carry out the objectives of this chapter and to effectively monitor the discharge of sewage, industrial wastes, and other wastes into state waters, the department may require the owner or operator of any point source, or the owner or operator of any facility that discharges into a municipal sewage system and to which pretreatment standards promulgated under this chapter apply, to:

(1) establish and maintain records;

(2) make reports;

(3) install, use, and maintain monitoring equipment or methods, including biological monitoring techniques;

(4) sample effluents using specified monitoring methods at designated locations and intervals;

(5) provide other information as may be reasonably required by the department.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(1).

75-5-603. Power to inspect. The authorized representative of the department, upon presentation of his credentials, may at reasonable times enter upon any public or private property to:

(1) investigate conditions relating to pollution of state waters or violations of permit conditions;

(2) have access to and copy any records required under this chapter;

(3) inspect any monitoring equipment or method required under 75-5-602(3); and

(4) sample any effluents which the owner or operator of such source is required to sample under 75-5-602(4).

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(2).

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-5-604. Information obtained to relate to standards. Any records, reports, or information obtained under 75-5-602 and 75-5-603 shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(3).

75-5-605. Prohibited activity. (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters.

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) Except for the permit exclusions identified in 75-5-401(5), it is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system that discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.

History: **En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971; amd. Sec. 3, Ch. 455, L. 1975; amd. Sec. 2, Ch. 444, L. 1977; R.C.M. 1947, 69-4806; amd. Sec. 2, Ch. 337, L. 1993; amd. Sec. 4, Ch. 595, L. 1993; amd. Sec. 11, Ch. 497, L. 1995; amd. Sec. 2, Ch. 582, L. 1995.**

Cross-References

Prevention of discharge of waste products from vessels, 23-2-521, 23-2-522.

Dead animals — unlawful disposition, 75-10-213.

Action for damage to water supply caused by metal mining operation, 82-4-355.

75-5-606 through 75-5-610 reserved.

75-5-611. Violation of chapter — administrative actions and penalties — notice and hearing. (1) When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:

(a) the provision of statute, rule, permit, or approval alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the specific nature of corrective action that the department requires;

(d) as applicable, the amount of the administrative penalty that will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

(e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.

(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:

(i) does not involve assessment of an administrative penalty; or

(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.

(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).

(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged

violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.

(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred or in Lewis and Clark County.

(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

(c) If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.

(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.

(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the board may grant for good cause shown.

(8) Instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

(9) (a) An action initiated under this section may include an administrative penalty of not more than $10,000 for each day of each violation; however, the maximum penalty may not exceed $100,000 for any related series of violations.

(b) Administrative penalties collected under this section must be deposited in the general fund.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.

(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

History: En. Sec. 13, Ch. 21, L. 1971; amd. Sec. 65, Ch. 349, L. 1974; amd. Sec. 8, Ch. 455, L. 1975; R.C.M. 1947, 69-4820; amd. Sec. 2, Ch. 504, L. 1993.

Cross-References

Montana Administrative Procedure Act — contested case hearings, Title 2, ch. 4, part 6.

75-5-612. Additional sanctions authorized. In addition to all other remedies created by this chapter, the department is authorized to take appropriate enforcement action on its own initiative to prevent, abate, and control:

(1) the pollution of state waters;

(2) any violation of a condition or limitation imposed by a permit issued under 75-5-402(1); or

(3) any violation of rules relating to pretreatment standards.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(1).

75-5-613. Compliance orders. In furtherance of 75-5-612, a person violating a condition, limitation, standard, or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. The order must specify the condition, limitation, standard, or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard, or other requirement that has been violated. The compliance order issued under this section shall be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(2).

Cross-References

Service of process, Rules 4D and 5, M.R.Civ.P. (see Title 25, ch. 20).

75-5-614. Injunctions authorized. (1) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county where a violation occurs or is threatened, and the court has jurisdiction to restrain the violation and to require compliance.

(2) The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

History: (1)En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; Sec. 69-4820.1, R.C.M. 1947; (2)En. Sec. 19, Ch. 21, L. 1971; amd. Sec. 68, Ch. 349, L. 1974; amd. Sec. 12, Ch. 455, L. 1975; Sec. 69-4825, R.C.M. 1947; R.C.M. 1947, 69-4820.1(3), 69-4825; amd. Sec. 12, Ch. 497, L. 1995.

Cross-References

Injunctions — jurisdiction of Supreme Court, 3-2-205.

Injunctions, Title 27, ch. 19.

75-5-615. Violators subject to penalties. (1) A person found to be in violation of a condition, limitation, standard, or other requirement established pursuant to 75-5-612 through 75-5-614 is subject to the penalty provisions of 75-5-631, 75-5-632, 75-5-633, and 75-5-635.

(2) For the purpose of this section, the term "person" means, in addition to the definition contained in 75-5-103, any responsible corporate officer.

History: **En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(4), (5); amd. Sec. 6, Ch. 68, L. 1979.**

75-5-616. Enforcement of permits and chapter. The department shall take actions that are authorized under this part to ensure that the terms and conditions of issued permits are complied with and to ensure that violations of this chapter are appropriately prosecuted.

History: **En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(g); amd. Sec. 6, Ch. 297, L. 1995.**

75-5-617. Enforcement response. (1) Whenever, on the basis of information available to the department, the department finds that a person is in violation of this chapter, a rule adopted under this chapter, or a condition or limitation in a permit, authorization, or order issued under this chapter, the department shall initiate an enforcement response, which may include any of the following actions:

(a) issuance of a letter notifying the person of the violation and requiring compliance;

(b) issuance of an order requiring the person to correct the violation pursuant to 75-5-601, 75-5-611, 75-5-613, and 75-5-621;

(c) bringing a judicial action as authorized by 75-5-614 and 75-5-622; or

(d) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and 75-5-631 through 75-5-633.

(2) Unless an alleged violation represents an imminent threat to human health, safety, or welfare or to the environment, the department shall first issue a letter notifying the person of the violation and requiring compliance. If the person fails to respond to the conditions in the department's letter, then the department shall take further action as provided in subsection (1).

(3) The provisions of this chapter do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties, prior to initiating any administrative action authorized by this chapter.

History: **En. Sec. 5, Ch. 297, L. 1995.**

75-5-618 through 75-5-620 reserved.

75-5-621. Emergencies. (1) Notwithstanding other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The notice must indicate that the order is an emergency order.

(3) Upon issuing an order, the department shall fix a place and time for a hearing before the board, not later than 5 days after issuing the order unless

the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board must be accompanied by the information required in 75-5-611(6). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. The initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section.

History: En. Sec. 18, Ch. 21, L. 1971; amd. Sec. 11, Ch. 140, L. 1977; R.C.M. 1947, 69-4824; amd. Sec. 7, Ch. 297, L. 1995; amd. Sec. 266, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (3), at end of fifth sentence, substituted "information required in 75-5-611(6)" for "statement specified in 75-5-611(5)". Amendment effective March 12, 1997.

Cross-References

Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-5-622. Additional emergency powers. Notwithstanding any other provisions of this chapter, the department, upon receipt of evidence that a pollution source or combination of sources is endangering the health, welfare, or livelihood of a person, may bring suit in the district court of any county in which the defendant is located or resides or is doing business to enjoin the discharge of pollutants causing or contributing to the alleged pollution.

History: En. 69-4824.1 by Sec. 7, Ch. 506, L. 1973; R.C.M. 1947, 69-4824.1.

75-5-623 through 75-5-630 reserved.

75-5-631. Civil penalties — injunctions not barred. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter, the person is subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain enforcement proceedings in the name of the state.

(4) In an action seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement or judgment, as appropriate:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, the violator's ability to pay and prior history of violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other matters that justice may require.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(1), (3); amd. Sec. 1, Ch. 644, L. 1991; amd. Sec. 8, Ch. 297, L. 1995; amd. Sec. 13, Ch. 497, L. 1995.

Cross-References

Injunctions, Title 27, ch. 19.

75-5-632. Criminal penalties. A person who willfully or negligently violates 75-5-605 or any pretreatment standard established pursuant to this chapter is guilty of an offense and, upon conviction, is subject to a fine not to exceed $25,000 per day of violation or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, subsequent convictions subject a person to a fine of not more than $50,000 per day of violation or imprisonment for not more than 2 years, or both.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(2); amd. Sec. 9, Ch. 297, L. 1995.

Cross-References

Execution of criminal fine, 46-19-102.

75-5-633. Penalties for false statements and falsifying monitoring. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall upon conviction be punished by a fine of not more than $25,000 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(6); amd. Sec. 2, Ch. 644, L. 1991.

75-5-634. Disposition of fines and civil penalties. Fines and civil penalties collected under this chapter, except those collected in a justice's court, must be deposited into the state general fund.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(5); amd. Sec. 43, Ch. 557, L. 1987; amd. Sec. 3, Ch. 600, L. 1991; amd. Sec. 62, Ch. 509, L. 1995.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

75-5-635. Costs and expenses — recovery by department. (1) In a civil action initiated by the department under this chapter, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey that led to the establishment of the violation and any expense incurred by the state in removing, correcting, or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

(2) Any costs and expenses recovered by the department under the provisions of subsection (1) must be deposited in the state general fund.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(7); amd. Sec. 4, Ch. 600, L. 1991; amd. Sec. 63, Ch. 509, L. 1995.

75-5-636. Investigation of complaints by other parties. A person, association, corporation, or agency of the state or federal government may notify the department of an alleged violation of this chapter. Based upon information submitted by the person, association, corporation, or agency, the department shall conduct an investigation to determine the validity of the complaint. If a violation is established by the department's investigation, the department shall initiate an appropriate enforcement response as described in 75-5-617. If the investigation proves the protest to have been without reasonable cause, the department may seek recovery of investigative costs from the person who made the notification.

History: En. Sec. 20, Ch. 21, L. 1971; amd. Sec. 69, Ch. 349, L. 1974; amd. Sec. 13, Ch. 455, L. 1975; R.C.M. 1947, 69-4826; amd. Sec. 10, Ch. 297, L. 1995; amd. Sec. 14, Ch. 497, L. 1995.

Cross-References

Mandamus, Title 27, ch. 26.

75-5-637 through 75-5-640 reserved.

75-5-641. Appeals from board orders — review by district court. (1) An appeal of an order of the board shall be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal does not stay the effectiveness of any order of the board unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that any violation found by the board will not continue or, if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.

History: En. Sec. 15, Ch. 21, L. 1971; amd. Sec. 66, Ch. 349, L. 1974; R.C.M. 1947, 69-4821.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

Montana Rules of Civil Procedure — intervention, Rule 24, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Part 7
Water Quality Assessment

75-5-701. Purpose. Consistent with the policy established in 75-5-101(2) to provide a comprehensive program for the prevention, abatement, and control of water pollution, the purpose of this part is to further direct the department to monitor state waters to accurately assess their quality and, when required, to develop total maximum daily loads for those water bodies identified as threatened or impaired.

History: En. Sec. 2, Ch. 541, L. 1997.

Compiler's Comments

Effective Date: Section 8, Ch. 541, L. 1997, provided: "[This act] is effective on passage and approval." Approved May 5, 1997.

75-5-702. Monitoring — water quality assessment listing. (1) The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

(2) In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.

(3) A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 60 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the department's decision to the board.

(4) The department shall, in consultation with local conservation districts and watershed advisory groups pursuant to 75-5-704, review and revise the list and priority rankings of water bodies identified as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The department shall make available for public review the data and information used in making any changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this section.

(5) By October 1, 1999, the department shall develop and maintain a data management system that can be used to assess the validity and reliability of the data used in the listing and priority ranking process. The department shall make available to the public, upon request, data from its data management system. The department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the requestor.

(6) By October 1, 1999, the department shall use the data management system developed and maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient credible data to support its

listing. If the department removes a water body because there is a lack of sufficient credible data to support its listing, the department shall monitor and assess that water body during the next field season or as soon as possible thereafter to determine whether it is a threatened water body or an impaired water body.

(7) In prioritizing water bodies for TMDL development, the department shall, in consultation with the statewide TMDL advisory group established pursuant to subsection (9), take into consideration the following:

(a) the beneficial uses established for a water body;

(b) the extent that natural factors over which humans have no control are contributing to any impairment;

(c) the impacts to human health and aquatic life;

(d) the degree of public interest and support;

(e) the character of the pollutant and the severity and magnitude of water quality standard noncompliance;

(f) whether the water body is an important high-quality resource in an early stage of degradation;

(g) the size of the water body not achieving standards;

(h) immediate programmatic needs such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;

(i) court orders and decisions relating to water quality;

(j) state policies and priorities, including the protection and restoration of native fish when appropriate;

(k) the availability of technology and resources to correct the problems;

(l) whether actions or voluntary programs that are likely to correct the impairment of a particular water body are currently in place; and

(m) the recreational, economic, and aesthetic importance of a particular water body.

(8) The department shall, in consultation with the statewide TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL development. The department may not rank a water body as a high priority under this section without first validating the data necessary to support the ranking.

(9) (a) The department shall establish a statewide TMDL advisory group to serve in the consultation capacity set forth in 75-5-704(2)(a) and subsections (7) and (8) of this section. Fourteen members must be appointed by the director, based upon one nomination from each of the following interests:

(i) livestock-oriented agriculture;

(ii) farming-oriented agriculture;

(iii) conservation or environmental interests;

(iv) water-based recreationists;

(v) the forestry industry;

(vi) municipalities;

(vii) point source dischargers;

(viii) mining;

(ix) federal land management agencies;

(x) state trust land management agencies;

(xi) supervisors of soil and water conservation districts for counties east of the continental divide;

(xii) supervisors of soil and water conservation districts for counties west of the continental divide;

(xiii) the hydroelectric industry; and

(xiv) fishing-related businesses.

(b) If the director receives more than one nomination from a particular interest, the director shall notify the respective nominators and request that they agree on one nominee.

(10) The department shall provide public notice of meetings of the statewide TMDL advisory group and shall solicit, document, and consider public comments provided during the deliberations of the advisory group.

History: En. Sec. 3, Ch. 541, L. 1997.

Compiler's Comments

Effective Date: Section 8, Ch. 541, L. 1997, provided: "[This act] is effective on passage and approval." Approved May 5, 1997.

75-5-703. Development and implementation of total maximum daily loads. (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources, and load allocations for nonpoint sources as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) Within 10 years from May 5, 1997, the department shall develop TMDLs for all water bodies on the list of waters that are threatened or impaired, as that list reads on May 5, 1997. This provision does not apply to water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702. Within 1 year from May 5, 1997, the department shall establish a schedule for completing the TMDLs within the 10-year period established by this subsection. The schedule must also provide a reasonable timeframe for TMDL development for impaired and threatened water bodies that are listed subsequent to May 5, 1997, and are prioritized as set forth in 75-5-702.

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are

available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

(a) incorporate the TMDL into its current continuing planning process;

(b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and

(c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue their activities provided those activities are conducted in accordance with reasonable land, soil, and water conservation practices;

(d) for existing nonpoint source activities, the department shall continue to utilize educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312.

History: En. Sec. 4, Ch. 541, L. 1997.

Compiler's Comments

Effective Date: Section 8, Ch. 541, L. 1997, provided: "[This act] is effective on passage and approval." Approved May 5, 1997.

75-5-704. Watershed advisory groups. (1) In implementing the consultation requirements under 75-5-702(4) and 75-5-703(1) and (2), the department shall request the participation of representatives of the following interest groups to work in an advisory capacity with the local conservation districts and the department:

(a) livestock-oriented agriculture;
(b) farming-oriented agriculture;
(c) conservation or environmental interests;
(d) water-based recreationists;
(e) the forestry industry;
(f) municipalities;
(g) affected or potentially affected point source dischargers;
(h) mining;
(i) existing local watershed groups;
(j) federal land management agencies;
(k) state trust land management agencies;
(l) the tourism industry;
(m) the hydroelectric industry, if applicable; and
(n) fishing-related businesses.

(2) In implementing the consultation requirements of 75-5-702 and 75-5-703, the department shall:

(a) prior to consultation with the statewide TMDL advisory group pursuant to 75-5-702(7) and (8), schedule meetings with appropriate local conservation districts and the watershed advisory groups at a location within their affected geographic area to review and revise the list of water bodies provided for in 75-5-702; and

(b) at a meeting held pursuant to subsection (2)(a), request whether there is new information that may affect the listing or priority ranking on water bodies within the affected area and solicit comments on revising the list.

(3) Based upon the information provided pursuant to subsection (2)(b), the department shall revise the list according to 75-5-702.

(4) Prior to and during the development of a TMDL within a particular watershed or basin, the department shall schedule a meeting or meetings with appropriate local conservation districts and watershed advisory groups at a location within the affected geographic area in order to solicit comments on developing the TMDL and information on sources that may be contributing to water quality impairment.

History: En. Sec. 5, Ch. 541, L. 1997.

Compiler's Comments

Effective Date: Section 8, Ch. 541, L. 1997, provided: "[This act] is effective on passage and approval." Approved May 5, 1997.

Code Commissioner Correction: Pursuant to the authority contained in sec. 314, Ch. 42, L. 1997, in (2)(a) the Code Commissioner substituted a reference to sec. 3(7) and (8) (75-5-702(7) and (8)) for reference to sec. 2(7) and (8).

75-5-705. Nonimpairment of water rights. Nothing in this part may be construed to divest, impair, or diminish any water right recognized pursuant to Title 85.

History: En. Sec. 6, Ch. 541, L. 1997.

Compiler's Comments

Effective Date: Section 8, Ch. 541, L. 1997, provided: "[This act] is effective on passage and approval." Approved May 5, 1997.

Parts 8 through 10 reserved

Part 11

Wastewater Treatment Revolving Fund

Part Cross-References

Water and Wastewater Operators' Advisory Council, 2-15-2105.

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

County water and/or sewer districts, Title 7, ch. 13, part 22 and 23.

Consolidated local government waters supply and sewer districts, Title 7, ch. 13, part 30.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

Water treatment plant operators, Title 37, ch. 42.

75-5-1101. Short title. This part may be cited as the "Water Pollution Control State Revolving Fund Act".

History: En. Sec. 1, Ch. 678, L. 1989; amd. Sec. 2, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 before "Revolving" substituted "Water Pollution Control State" for "Wastewater Treatment". Amendment effective May 5, 1997.

75-5-1102. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing

debt; program start-up costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a project, all capital costs incurred or to be incurred by a municipality or a private person, including but not limited to engineering, construction, financing, and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated thereunder.

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(4) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(5) "Loan" means a loan of money from the revolving fund to a municipality or a private person.

(6) "Municipality" means any state agency, city, town, or other public body created pursuant to state law.

(7) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(8) "Program" means the water pollution control state revolving fund program established by this part.

(9) (a) "Project" means an activity that is eligible for financing by the program under the federal act, including treatment works, as defined under section 1292 of the federal act (33 U.S.C. 1292), and nonpoint source pollution control under section 1329 of the federal act (33 U.S.C. 1329), and for which a municipality or private person makes an application for a loan or other financial assistance.

(b) "Project" does not include a solid waste management system, as defined in 75-10-203, except for a project that is intended specifically for the closure or postclosure care of or ground water corrective action at a landfill that:

(i) was in operation on May 5, 1997, and that accepts an annual average of less than 20,000 tons of solid waste per year; or

(ii) was closed prior to May 5, 1997.

(10) "Revolving fund" means the fund established by 75-5-1106.

History: En. Sec. 2, Ch. 678, L. 1989; amd. Sec. 3, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in definition of cost, near beginning before "project", deleted "wastewater treatment works", near middle, after "private", substituted "person" for "concern", and after "engineering" inserted "construction"; inserted definition of intended use plan and private person; deleted definition of private concern (see 1997 Session Law for former text); in definition of municipality, near beginning after "any", inserted "state agency" and after "other" substituted "public body created pursuant to state law" for "local government unit having authority to own and operate a sewage system and wastewater treatment works"; in definition of program, after "means the", substituted "water pollution control state revolving fund" for "wastewater treatment works revolving loan"; in (a) of definition of project substituted language providing that a project means an activity eligible for financing by the program under the federal act and for which a municipality or private person applies for a loan or other financial assistance for "means a wastewater treatment works or part of a wastewater treatment works for which a municipality or private concern makes an application for a loan or other financial assistance" and inserted (b) providing that a project does not include a solid waste management system except for a project specifically intended for the closure or postclosure care of a ground water corrective action at certain landfills; and made minor changes in style. Amendment effective May 5, 1997.

Cross-References

Water quality generally — chapter definitions, 75-5-103.

75-5-1103. Water pollution control state revolving fund program. There is a program under which the state may provide financial assistance to municipalities and private persons to finance or refinance part or all of the cost of projects. The program must be administered in accordance with this part and the federal act.

History: En. Sec. 3, Ch. 678, L. 1989; amd. Sec. 4, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in first sentence, near middle, substituted "private persons" for "private concerns". Amendment effective May 5, 1997.

75-5-1104. Authorization of agreement — content. (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in 75-5-1106;

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by 75-5-1106 on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private persons in accordance with this part in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private person will maintain project accounts in accordance with generally accepted government accounting standards;

(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of this part.

History: En. Sec. 4, Ch. 678, L. 1989; amd. Sec. 5, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in (2)(c), near middle, substituted "private persons" for "private concerns"; and in (2)(h) substituted "private person" for "private concern". Amendment effective May 5, 1997.

75-5-1105. Rulemaking. The department and the department of natural resources and conservation may adopt rules to implement the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private persons, if considered appropriate and necessary for the successful administration of the program.

History: En. Sec. 9, Ch. 678, L. 1989; amd. Sec. 186, Ch. 418, L. 1995; amd. Sec. 6, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in (4), near middle, substituted "private persons" for "private concerns". Amendment effective May 5, 1997.

Saving Clause — Rules: Section 29(2), Ch. 538, L. 1997, provided: "Rules that were adopted pursuant to Title 75, chapter 5, part 11, or Title 75, chapter 6, part 2, prior to [the effective date of this act] [effective May 5, 1997] continue in force until amended or repealed pursuant to those parts."

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

75-5-1106. Revolving fund. (1) There is established in the state treasury a separate account designated as the water pollution control state revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state from the following sources:

(i) funds provided pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of projects;

(ii) grants or transfers of grants received under subchapter II of the federal act for projects; and

(iii) money transferred to the fund from the drinking water state revolving fund pursuant to 75-6-211;

(b) the state allocation account, the net proceeds of bonds of the state issued pursuant to 75-5-1121 and other money appropriated by the legislature;

(c) the administration account, 4% of the capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made as authorized by 75-5-1113 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department and the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-5-1121 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

(5) As allowed under the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., and with the governor's permission, an amount equivalent to up to 33% of each year's drinking water state revolving fund federal capitalization grant may be transferred from the federal allocation account, established under subsection (2)(a), to the drinking water state revolving fund federal allocation account established in 75-6-211.

History: En. Sec. 5, Ch. 678, L. 1989; amd. Sec. 1, Ch. 788, L. 1991; amd. Sec. 187, Ch. 418, L. 1995; amd. Sec. 7, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in (1), in first sentence before "revolving", substituted "water pollution control state" for "wastewater treatment works"; at end of (2)(a) inserted "from the following sources"; at beginning of (2)(a)(i) inserted "funds provided" and at end substituted "projects" for "wastewater treatment works"; in(2)(a)(ii), at end, substituted "projects" for "construction of wastewater treatment works"; inserted (2)(a)(iii) requiring that money transferred to the fund from the drinking water state revolving fund be credited to the federal allocation account; inserted (5) allowing up to 33% of each year's drinking water state revolving fund federal capitalization grant to be transferred from the federal allocation account to the drinking water state revolving fund federal allocation account; and made minor changes in style. Amendment effective May 5, 1997.

75-5-1107. Uses of revolving fund. Money in the revolving fund must be used to:

(1) make loans to municipalities to finance all or a portion of the cost of a project and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects;

(2) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(5) provide loan guarantees for similar revolving funds established by municipalities;

(6) earn interest on fund accounts; and

(7) pay reasonable administrative costs of the program not to exceed 4% of all federal grant awards to the fund or the maximum amount allowed under the federal act.

History: En. Sec. 6, Ch. 678, L. 1989; amd. Sec. 8, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 near beginning substituted "must be used" for "may be used"; in (1),near beginning after "municipalities", deleted "and private concerns" and at end inserted "and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects"; in (7), near middle before "program", deleted "revolving loan"; and made minor changes in style. Amendment effective May 5, 1997.

75-5-1108. Use of funds — statutory appropriation. Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of making loans to municipalities and private concerns and paying debt service on obligations.

History: En. Sec. 12, Ch. 678, L. 1989; amd. Sec. 53, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 deleted second sentence that read: "Money in the special administrative costs account authorized by 75-5-1113 is subject to legislative appropriation constraints, and expenditures from this account must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose." Amendment effective July 1, 1997.

75-5-1109 and 75-5-1110 reserved.

75-5-1111. Applications. (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan to finance construction of a project must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) a current financial statement showing assets, liabilities, revenue, and expenses of the applicant;

(g) if the applicant is a municipality, a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations of the municipality that were issued or incurred to finance any part of the municipality's project or system of which the project is a part and, if so, a description of the loans, notes, bonds, or other obligations;

(h) if the applicant is a private person, a statement as to whether, at the time of application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations; and

(i) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to engineering reports, economic feasibility studies, and legal opinions.

(2) Each application for a loan to refinance a project, including a purchase of outstanding obligations issued by a municipality to finance a project in whole or in part, must include:

(a) a reasonably detailed description of the project;

(b) a schedule of the cost of the project;

(c) the date on which construction of the project began;

(d) a description of the loans, notes, bonds, or other obligations to be refinanced and of any other loans, notes, bonds, or obligations issued or incurred to finance any part of the municipality's project; and

(e) any other information that the department or the department of natural resources and conservation may require.

(3) Each application for financial assistance in the form of a guaranty or the purchase of insurance for a municipal obligation must include all items required by subsection (1) and any other information the department may require.

History: En. Sec. 7, Ch. 678, L. 1989; amd. Sec. 9, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 inserted (1)(f) requiring the loan application to include a current financial statement; in (1)(g), in two places, inserted "loans" and near end, after "municipality's", substituted "project or system of which the project is a part" for "sewage system"; inserted (1)(h) requiring the loan application of a private person to contain a statement of whether there are any outstanding loans, notes, or other obligations; in (2)(d), in two places, inserted "loans" and at end substituted "project" for "sewage system"; and made minor changes in style. Amendment effective May 5, 1997.

75-5-1112. Evaluation of projects and loan applications. The department of natural resources and conservation and the department shall evaluate projects and loan applications. In evaluating projects and loan applications, the following factors must be considered:

(1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;

(2) the financial capacity of the municipality or private person to repay the loan;

(3) the financial, managerial, and technical ability of the municipality or private person to properly operate and maintain the project;

(4) the feasibility of project completion given the total financing available;

(5) the ability of the municipality or private person to pay the costs of the project without the requested financial assistance;

(6) the total amount of loan funds available for financial assistance in the revolving fund;

(7) the total amount requested in other applications that have been received or that are likely to be received;

(8) the ranking of the project on the priority list or intended use plan; and

(9) any other criteria that the department determines appropriate, considering the purposes of the federal act and the program.

History: En. Sec. 8, Ch. 678, L. 1989; amd. Sec. 18, Ch. 553, L. 1995; amd. Sec. 10, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in first sentence, at beginning, deleted "After consultation with", after "conservation" inserted "and", and at end substituted "and loan applications" for "for loans and other financial assistance and place them on a priority list or intended use plan" and in second sentence, after "projects", inserted "and loan applications"; inserted (1) through (4) requiring the consideration of technical design of the project, financial capacity to repay the loan, the ability of the applicant to operate and maintain the project, and the feasibility of completion of the project; in (5) substituted "private person" for "private concern"; in (6), at beginning, substituted "total amount of loan funds" for "amount"; in (8) substituted "the ranking of the project on the priority list or intended use plan" for "the need for and benefit to be derived from the project"; deleted former (5) that read: "(5) in the case of an application to refinance an outstanding obligation, the benefit of refinancing as measured by a decrease in interest rates and whether the refinancing permits the construction of an additional project by the municipality"; and made minor changes in style. Amendment effective May 5, 1997.

75-5-1113. Conditions on loans. (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private person to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private person complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(c) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements and other requirements established by the department; and

(h) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in

the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(a) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(b) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private person, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans. The department of natural resources and conservation may require that loans to private persons be further secured by a mortgage and other security interests in the project that is being financed or other forms of additional security as considered necessary, including personal guarantees and letters of credit.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the administration account. Money deposited in the administration account established in 75-5-1106 must be used for the payment of administrative costs of the program. Money deposited in the special administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program.

History: En. Sec. 10, Ch. 678, L. 1989; amd. Sec. 2, Ch. 788, L. 1991; amd. Sec. 19, Ch. 553, L. 1995; amd. Sec. 267, Ch. 42, L. 1997; amd. Sec. 11, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (5)(b) substituted "75-5-1106" for "75-6-211"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 538 in (1), in middle of first sentence and second sentence, substituted "private person" for "private concern"; at end of (1)(b) substituted "the term of the loan" for "20 years"; in middle of (1)(c) substituted "generally accepted accounting standards" for "recognized government accounting procedures"; in (1)(g), after "requirements", substituted "and other requirements" for "for public wastewater systems" and at end substituted "department" for "board"; in (4), in first sentence near middle, substituted "private person" for "private concern" and inserted third sentence allowing the Department of Natural Resources and Conservation to require further security for loans to private persons; in (5), at end of first sentence, substituted "private person" for "private concern"; and made minor changes in style. Amendment effective May 5, 1997.

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1, parts 1 and 2.

75-5-1114 through 75-5-1120 reserved.

75-5-1121. Authorization of bonds — appropriation of proceeds. (1) Upon request of the department of natural resources and conservation and upon certification by the department that the state has entered into a capitalization grant agreement or other agreement with the United States government pursuant to 75-6-204 and that federal capitalization grants have been made to the state for the program, the board of examiners is authorized to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received or amounts to be used to pay interest on the bonds or the costs of issuing the bonds, are appropriated to the state allocation account of the revolving fund. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of sections 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state.

History: En. Sec. 11, Ch. 678, L. 1989; amd. Sec. 3, Ch. 788, L. 1991; amd. Sec. 20, Ch. 553, L. 1995; amd. Sec. 12, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in first sentence of (1), near beginning after "department", deleted "of natural resources and conservation" and at end, before "program", deleted "revolving loan"; and in (2), near end of first sentence before "revolving fund", deleted "wastewater treatment works". Amendment effective May 5, 1997.

75-5-1122. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $10 million and the issuance and sale of general obligation bonds in this amount for the purpose of providing the state's share of the program.

History: En. Sec. 13, Ch. 678, L. 1989.

CHAPTER 6

PUBLIC WATER SUPPLIES, DISTRIBUTION, AND TREATMENT

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75-6-211. Revolving fund.
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75-6-213. Repealed.
75-6-214. Use of funds — statutory appropriation.
75-6-215. Repealed.
75-6-216 through 75-6-220 reserved.
75-6-221. General loan and assistance program.
75-6-222. Evaluation of projects and loan applications.
75-6-223. Applications for loans.

75-6-224. Loan conditions.
75-6-225. Authorization of bonds — appropriation of proceeds.
75-6-226. Loan subsidy for disadvantaged communities.
75-6-227 through 75-6-230 reserved.
75-6-231. Intended use plan — advisory committee.
75-6-232. Insurance and guarantee program.

Chapter Cross-References

Metropolitan sanitary and storm sewer systems, Title 7, ch. 13, part 1.

County water and sewer districts, 7-13-2203.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

Cities and towns — water supplies and regulation, Title 7, ch. 13, part 44.

Water treatment plant operators, Title 37, ch. 42.

Licensing of plumbers, Title 37, ch. 69, part 3.

Applicability of public water supply laws to subdivisions, 76-4-131.

Water and ground water — policy of state, 85-1-101.

Part 1
Public Water Supply

75-6-101. Policy. It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses.

History: En. Sec. 140, Ch. 197, L. 1967; R.C.M. 1947, 69-4901.

Cross-References

Exclusion of municipalities — appropriation for public water supplies, 85-2-317.

75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Board” means the board of environmental review provided for in 2-15-3502.

(2) “Certified wellhead protection area” means an area certified by the department that protects the surface and subsurface area surrounding a source of ground water for a public water supply system through which contaminants may move toward and reach the source of supply.

(3) “Community water system” means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) “Contamination” means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(5) “Cross-connection” means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewer line or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

(6) “Department” means the department of environmental quality provided for in 2-15-3501.

(7) “Drainage” means rainfall, surface, and subsoil water.

(8) “Industrial waste” means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

(9) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.

(10) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

(11) "Montana wellhead protection program" means a program administered by the department to certify wellhead protection areas and review wellhead protection ordinances.

(12) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(13) "Person" means an individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

(14) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife. A discharge that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(15) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for a period of at least 60 days in a calendar year.

(16) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for a period of at least 60 days in a calendar year.

(17) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

(18) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(19) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(20) "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year.

History: En. Sec. 141, Ch. 197, L. 1967; amd. Sec. 1, Ch. 67, L. 1974; amd. Sec. 1, Ch. 556, L. 1977; R.C.M. 1947, 69-4902; amd. Sec. 1, Ch. 556, L. 1979; amd. Sec. 2, Ch. 312, L. 1989; amd. Sec. 1, Ch. 645, L. 1991; amd. Sec. 188, Ch. 418, L. 1995; amd. Sec. 3, Ch. 488, L. 1995; amd. Secs. 525, 568, Ch. 546, L. 1995.

Cross-References

Water treatment plants and distribution systems, 37-42-101, 75-5-401, 75-5-403.

75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(f) the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and

(k) any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part.

History: En. Sec. 142, Ch. 197, L. 1967; amd. Sec. 70, Ch. 349, L. 1974; amd. Sec. 2, Ch. 556, L. 1977; R.C.M. 1947, 69-4903; amd. Sec. 2, Ch. 556, L. 1979; amd. Sec. 2, Ch. 197, L. 1989; amd. Sec. 2, Ch. 645, L. 1991; amd. Sec. 13, Ch. 471, L. 1995; amd. Sec. 4, Ch. 488, L. 1995; amd. Sec. 8, Ch. 73, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 73 deleted former (2)(e) that read: "the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems". Amendment effective July 1, 1997.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part.

History: En. Sec. 143, Ch. 197, L. 1967; amd. Sec. 71, Ch. 349, L. 1974; amd. Sec. 3, Ch. 556, L. 1977; R.C.M. 1947, 69-4904; amd. Sec. 3, Ch. 556, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 645, L. 1991.

Cross-References

Approval of water supply required for dairy products manufacturing plants, 81-22-403.

75-6-105. Records required for wells drilled to supply water to public. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the board. Data shall be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.

History: En. Sec. 145, Ch. 197, L. 1967; R.C.M. 1947, 69-4906.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Water well contractors, Title 37, ch. 43.

75-6-106. Laboratory license required. A laboratory analysis of water taken from a public water supply system or any report of an analysis required by this part or a rule adopted under this part may not be accepted by the department or board unless the analysis or report is made by the department of public health and human services' laboratory or by a laboratory licensed by the department of public health and human services for water analysis purposes.

History: En. 69-4905.2 by Sec. 5, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.2; amd. Sec. 4, Ch. 556, L. 1979; amd. Sec. 9, Ch. 73, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 73 near middle, after "made by the", substituted "department of public health and human services' laboratory" for "laboratory of the department" and near end, after "department", inserted "of public health and human services"; deleted former second sentence that read: "The department shall issue a license to any laboratory that can meet criteria for licensing established in the rules adopted by the board"; deleted former (2) and (3) that read: "(2) An application for a license under this section shall be made on forms furnished by the department.

(3) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act"; and made minor changes in style. Amendment effective July 1, 1997.

75-6-107. Variances and exemptions. The department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the board. A variance or exemption granted pursuant to this section shall be accompanied by a compliance plan specifying a time schedule for compliance. A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: En. 69-4905.1 by Sec. 4, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.1; amd. Sec. 5, Ch. 556, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested case proceedings, Title 2, ch. 4, part 6.

75-6-108. Board to prescribe fees — opportunity for appeal. (1) The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than $2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than $2 for each service connection to the public water supply system, although the minimum fee for any system is $100, except that the fee for a transient noncommunity water system is $50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The board shall by rule prescribe fees to be assessed by the department on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a).

History: En. Sec. 4, Ch. 645, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) An action initiated under this part may include an administrative penalty not to exceed $500 for each day of violation. Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section.

History: En. Sec. 6, Ch. 645, L. 1991; amd. Sec. 2, Ch. 302, L. 1995; amd. Sec. 64, Ch. 509, L. 1995; amd. Sec. 10, Ch. 73, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 73 at end of (7) substituted "75-6-103(2)(i)" for "75-6-103(2)(j)". Amendment effective July 1, 1997.

Cross-References

Montana Administrative Procedure Act — contested case hearings, Title 2, ch. 4, part 6.

75-6-110. Enforcement response. (1) Whenever, on the basis of information available to the department, the department finds that a person is in violation of this part, a rule adopted under this part, or a condition, requirement of an approval, or order issued pursuant to this part, the department shall initiate an enforcement response, which may include any of the following actions:

(a) issuance of a letter notifying the person of the violation and requiring compliance;

(b) issuance of an order requiring the person to correct the violation pursuant to 75-6-104 and 75-6-109;

(c) bringing a judicial action as authorized by 75-6-111; or

(d) seeking administrative or judicial penalties as provided under 75-6-109, 75-6-113, and 75-6-114.

(2) Unless an alleged violation represents an imminent threat to human health, safety, or welfare or to the environment, the department shall first issue a letter notifying the person of the violation and requiring compliance. If the person fails to respond to the conditions in the department's letter, then the department shall take further action as provided in subsection (1).

(3) The provisions of this part do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties, prior to initiating an administrative action authorized by this part.

History: En. Sec. 1, Ch. 302, L. 1995.

75-6-111. Appeal from rule or standard — injunction to require compliance. (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court, except as otherwise provided in 75-6-109. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The court may award the department costs and expenses incurred in investigating and abating the violation. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113 or a civil penalty as provided in 75-6-114.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(1), (2); amd. Sec. 7, Ch. 68, L. 1979; amd. Sec. 1, Ch. 412, L. 1985; amd. Sec. 5, Ch. 645, L. 1991.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

Costs, Title 25, ch. 10.

75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate a railroad, logging road, logging camp, or electric or manufacturing plant of any kind on a watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) commence construction, alteration, extension, or operation of a system of water supply or water distribution that is designed to be a public water supply system or a system of sewer, drainage, waste, or sewage disposal that is designed to be a public sewage system or industrial waste discharge system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications. However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.

(5) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the board unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(6) violate any provision of this part or a rule adopted under this part; or

(7) violate any condition or requirement of an approval issued pursuant to this part.

History: En. Sec. 144, Ch. 197, L. 1967; R.C.M. 1947, 69-4905; amd. Sec. 6, Ch. 556, L. 1979; amd. Sec. 1, Ch. 230, L. 1989; amd. Sec. 5, Ch. 488, L. 1995; amd. Sec. 15, Ch. 497, L. 1995.

Cross-References

Plan for sewage system or wastewater disposal project — seal of engineer included, 18-2-122.

Nuisance, Title 27, ch. 30.

Action to recover damages to water supply, 75-20-405.

75-6-113. Penalty. Any person violating this part or any rule or order of the board or department issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500. Each day upon which a violation of this part occurs shall be considered a separate offense.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(3).

Cross-References

Execution of criminal fine, 46-19-102.

75-6-114. Civil penalty. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this part or a rule, order, or condition of approval issued under this part, the person is subject to a civil penalty not to exceed $10,000.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) When seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement or judgment, as appropriate:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state, and other matters that justice may require.

(5) Civil penalties collected pursuant to this section must be deposited in the state general fund.

History: En. Sec. 7, Ch. 645, L. 1991; amd. Sec. 3, Ch. 302, L. 1995; amd. Sec. 65, Ch. 509, L. 1995.

75-6-115. Public drinking water special revenue fund. (1) There is a public drinking water special revenue fund within the state special revenue fund established in 17-2-102.

(2) There must be credited to the public drinking water special revenue fund the revenue from fees assessed, collected, and allocated pursuant to 75-6-108. Funds from the public drinking water special revenue fund may be used only to pay department costs in implementing the public drinking water supply program, as described in this part.

History: En. Sec. 8, Ch. 645, L. 1991; amd. Sec. 66, Ch. 509, L. 1995.

75-6-116. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: **En. Sec. 1, Ch. 471, L. 1995.**

75-6-117 through 75-6-119 reserved.

75-6-120. Montana wellhead protection program — voluntary petitions. (1) The federal Safe Drinking Water Act, including 42 U.S.C. 300h-7, enables the department to administer a wellhead protection program that involves certification of local wellhead protection areas and review of wellhead protection area ordinances. In administering this program, the department may perform only those functions provided for by the federal Safe Drinking Water Act and this section.

(2) A supplier of a public water supply system may voluntarily submit for department review and approval a petition to establish a wellhead protection program for the system.

(3) The department may certify a wellhead protection area upon:

(a) receipt of a petition by a supplier for a public water supply system; and

(b) making a determination that the wellhead protection area meets criteria and thresholds for certification established by the Montana wellhead protection program.

(4) (a) The governing body of the county in which a wellhead protection area or areas exist may adopt an ordinance to regulate, control, and prohibit conditions that threaten the quality of water used within the wellhead protection area or areas.

(b) Prior to adopting a wellhead protection area ordinance, the governing body shall confer with the supplier of the public water supply system and shall then submit the ordinance to the department for review and verification that the ordinance is consistent with the requirements of this chapter.

(c) A wellhead protection area ordinance must be adopted using the procedures described in 7-5-103 through 7-5-107.

(5) (a) An ordinance adopted under subsection (4) is limited in applicability to the certified wellhead protection area or areas within the county.

(b) For a wellhead protection area that is located in two or more counties, the proposed wellhead protection area ordinance must be adopted by each county in order for the ordinance to be effective.

(6) A wellhead protection area ordinance adopted under this section may not conflict with and may not duplicate any other federal, state, or local law or regulation, including but not limited to zoning, fire codes, hazardous waste regulation under Title 75, chapter 10, part 4, or pesticide regulation under Title 80, chapter 8.

History: En. Sec. 6, Ch. 488, L. 1995.

75-6-121. Delegation of review of small public water and sewer construction. (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department may delegate to the division of local government review of:

(a) small public water and sewer systems; and

(b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer connections.

(2) The board may adopt rules regarding the delegation of review authority to divisions of local government.

History: En. Sec. 1, Ch. 312, L. 1989.

Part 2

Safe Drinking Water Treatment Revolving Fund Act

Part Cross-References

Water supply and regulation, Title 7, ch. 13, part 44.

75-6-201. Short title. This part may be cited as the "Drinking Water State Revolving Fund Act".

History: En. Sec. 1, Ch. 553, L. 1995; amd. Sec. 13, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 before "Drinking" deleted "Safe" and after "Water" substituted "State" for "Treatment". Amendment effective May 5, 1997.

75-6-202. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to:

(a) costs of servicing loans and issuing debt;

(b) program startup costs;

(c) financial, management, and legal consulting fees; and

(d) reimbursement costs for support services from other state agencies.

(2) "Community water system" means a public water system that is owned by a private person or a municipality and that serves at least 15 service connections used by year-round residents of the area served by the system or regularly serves at least 25 year-round residents. The term does not include a public water system that is owned by the federal government.

(3) "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public water system, including but not limited to:

(a) engineering, financing, and other fees;

(b) interest during construction;

(c) construction; and

(d) a reasonable allowance for contingencies to the extent permitted by the federal act and rules promulgated under the federal act.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Disadvantaged community" means one in which the service area of a public water system meets the affordability criteria established by rule adopted pursuant to this part.

(6) "Federal act" means the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as that act read on May 5, 1997.

(7) "Indian tribe" means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

(8) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(9) "Loan" means a loan of money from the revolving fund for project costs.

(10) "Municipality" means a state agency, city, town, or other public body created pursuant to state law or an Indian tribe.

(11) "Noncommunity water system" means a public water system that is not a community water system.

(12) "Nonprofit noncommunity water system" means a noncommunity water system owned by an organization that is organized under Montana law and that qualifies as a tax-exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code.

(13) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(14) "Program" means the drinking water state revolving fund program established by this part.

(15) "Project" means improvements or activities that are:

(a) to be undertaken for a public water system and that are of a type that will facilitate compliance with the national primary drinking water regulations applicable to the system; or

(b) to further the health protection objectives of the federal act.

(16) "Public water system" means a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if that system has at least 15 service connections or regularly serves at least 25 individuals. The term includes any collection, treatment, storage, and distribution facilities under control of an operator of a system that are used primarily in connection with a system and any collection or pretreatment storage facilities not under control of an operator and that are used primarily in connection with a system.

(17) "Revolving fund" means the drinking water state revolving fund established by 75-6-211.

History: En. Sec. 2, Ch. 553, L. 1995; amd. Sec. 14, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 inserted definitions of community water system, Department, disadvantaged community, intended use plan, municipality, noncommunity water system, and private person; deleted definitions of governmental agency, grant, and investor-owned public water system (see 1997 Session Law for former text); in definition of cost inserted (c) including construction; in definition of federal act, at end, inserted "42 U.S.C. 300f, et seq., as that act read on May 5, 1997"; in definition of Indian tribe, near beginning after "tribe", substituted "that has a federally recognized governing body carrying out substantial governmental duties and powers over any area" for "within the state of Montana that is recognized by the secretary of the U.S. department of interior"; substituted nonprofit noncommunity water system for nonprofit organization as defined term and after "means" inserted "a noncommunity water system owned by"; in definition of program, near beginning before "drinking", deleted "safe" and after "water" substituted "state revolving fund" for "treatment revolving loan"; in definition of project, near beginning after "improvements", inserted "or activities"; in first sentence of definition of public water system, near beginning before "water", deleted "piped" and after "consumption" inserted "through pipes or other constructed conveyances"; in definition of revolving fund, near beginning, substituted "drinking water state revolving fund" for "safe drinking water treatment revolving fund"; and made minor changes in style. Amendment effective May 5, 1997.

75-6-203. Drinking water state revolving fund program. There is a program under which the state may provide financial assistance to community water systems and nonprofit noncommunity water systems. The program must be administered in accordance with this part and the federal act.

History: En. Sec. 3, Ch. 553, L. 1995; amd. Sec. 15, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in first sentence, at end, substituted "community water systems and nonprofit noncommunity water systems" for "public water systems". Amendment effective May 5, 1997.

75-6-204. Authorization of agreement — content. (1) The department may enter into a capitalization grant agreement or other agreement with the environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into an agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in 75-6-211;

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by 75-6-211 on or before the date on which each federal grant payment is made to the state;

(c) deposit in the nonproject account for department programs authorized under section 300j-12(g)(2) of the federal act (42 U.S.C. 300j-12(g)(2)) a state match equal dollar-for-dollar to the capitalization grant deposited in the account;

(d) provide financial and technical assistance to a public water system in accordance with this part in an amount equal to 120% of the amount of each grant payment within a period not to exceed 1 year after receipt of a grant;

(e) expend all funds in the revolving fund in an expeditious and timely manner;

(f) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(g) expend each grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenue of the state;

(h) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(i) make biennial reports and provide annual audits to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of this part and the federal act.

(3) As a condition of making a loan or providing other financial assistance from the revolving fund, the department shall require that the public water system maintain project accounts in accordance with generally accepted government accounting standards.

History: En. Sec. 4, Ch. 553, L. 1995; amd. Sec. 16, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 inserted (2)(c) allowing for a state match equal dollar-for-dollar to the capitalization grant deposited in the nonproject account for Department programs; in (2)(i) substituted "make biennial reports and provide annual audits" for "make annual reports"; and made minor changes in style. Amendment effective May 5, 1997.

75-6-205. Rulemaking authority. The department and the department of natural resources and conservation may adopt rules within their respective authorities established within the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and technical assistance;

(2) governing the application of the criteria for awarding loans and technical assistance;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements;

(4) establishing ceilings on the amount of individual loans to be made if considered appropriate and necessary for the successful administration of the program;

(5) establishing affordability criteria to be used in awarding subsidies to disadvantaged communities;

(6) regarding other matters that may be required to ensure compliance of the program with the provisions of the federal act and rules promulgated under the federal act, unless these matters are specifically governed by this part; and

(7) to maintain the financial integrity of the program.

History: En. Sec. 5, Ch. 553, L. 1995; amd. Sec. 268, Ch. 42, L. 1997; amd. Sec. 17, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in introductory clause substituted "department of natural resources and conservation" for "board of natural resources and conservation". Amendment effective March 12, 1997.

Chapter 538 in two places, at beginning, substituted "department" for "board"; at end of (1) and (2) substituted "technical assistance" for "grants"; in (4), after "loans", deleted "and grants"; inserted (5) allowing the adoption of rules establishing affordability criteria for awarding subsidies to disadvantaged communities; and made minor changes in style. Amendment effective May 5, 1997.

Saving Clause — Rules: Section 29(2), Ch. 538, L. 1997, provided: "Rules that were adopted pursuant to Title 75, chapter 5, part 11, or Title 75, chapter 6, part 2, prior to [the effective date of this act] [effective May 5, 1997] continue in force until amended or repealed pursuant to those parts."

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-6-206 through 75-6-210 reserved.

75-6-211. Revolving fund. (1) There is established in the state treasury a separate account designated as the drinking water state revolving fund. The corpus of the fund must be available in perpetuity for providing assistance under this part. There are established within the revolving fund a federal allocation account, a state allocation account, an administration account, an investment income account, a debt service account, and a nonproject account.

(2) There must be credited to:

(a) the federal allocation account:

(i) all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to provide loans or other assistance, as authorized under this part, to community water systems and nonprofit noncommunity water systems; and

(ii) all amounts transferred to the fund from the water pollution control state revolving fund under 75-5-1106;

(b) the state allocation account:

(i) the net proceeds of bonds of the state issued pursuant to 75-6-225;

(ii) money appropriated by the legislature; and

(iii) other available qualifying funds;

(c) the administration account, 4% of the federal capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds;

(e) the debt service account, the interest portion of loan repayments; and

(f) the nonproject account for department programs authorized under section 300j-12(g)(2) of the federal act (42 U.S.C. 300j-12(g)(2)), up to 10% of the capitalization grant and the state's match as described in 75-6-204.

(3) Each loan made under this part must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-6-225 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

(5) As allowed under the federal act and with the governor's permission, the department may transfer up to 33% of each year's federal capitalization grant from the federal allocation account, established under subsection (2)(a), to the water pollution control state revolving fund federal allocation account established in 75-5-1106. The transfer of funds must be included in the intended use plan in 75-6-231.

History: En. Sec. 6, Ch. 553, L. 1995; amd. Sec. 269, Ch. 42, L. 1997; amd. Sec. 18, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (3), near beginning, substituted "75-6-224" for "75-6-225" (voided by ch. 538 amendment). Amendment effective March 12, 1997.

Chapter 538 in (1), in first sentence near end before "revolving", substituted "drinking water state" for "safe drinking water treatment" and at end of third sentence inserted "and a nonproject account"; in (2)(a)(i), at end after "fund to", substituted "provide loans or other assistance, as authorized under this part, to community water systems and nonprofit noncommunity water systems" for "assist construction of or improvements to public water systems"; inserted (2)(a)(ii) requiring that all amounts transferred from the water pollution control state revolving fund to the federal allocation account be credited to that account; inserted (2)(b)(iii) providing that other available qualifying funds be credited to the state allocation account; inserted (2)(f) requiring that up to 10% of capitalization grant and state's match be credited to the nonproject account for Department programs; at beginning of (3), after "made", substituted "under this part" for "as authorized by 75-6-225"; inserted (5) allowing the Department to transfer up to 33% of each year's federal capitalization grant to the water pollution control state revolving fund; and made minor changes in style. Amendment effective May 5, 1997.

75-6-212. Use of revolving fund. (1) Money in the revolving fund may be used to:

(a) make loans to community water systems and nonprofit noncommunity water systems as provided in this part;

(b) buy or refinance the debt obligation of a municipality at an interest rate that does not exceed market rates, provided that the obligations were incurred and construction of the project began after July 1, 1993;

(c) guarantee or purchase insurance in order to enhance credit or reduce interest rates for obligations of municipalities that are issued to finance eligible projects;

(d) leverage the total amount of revolving funds available by providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, the net proceeds of which are deposited in the revolving fund;

(e) pay reasonable administrative costs of the program, not to exceed 4% of the annual capitalization grant or the maximum amount allowed under the federal act;

(f) if matched by an equal amount of state funds, pay the department's costs in an amount not to exceed 10% of the annual capitalization grant for the following:

(i) public water system supervision programs;

(ii) administering or providing technical assistance through source water protection programs;

(iii) developing and implementing a capacity development strategy under section 300g-9 of the federal act (42 U.S.C. 300g-9); and

(iv) administering an operator certification program in order to meet the requirements of section 300g-8 of the federal act (42 U.S.C. 300g-8);

(g) pay the costs in an amount not to exceed 2% of the annual capitalization grant for the purpose of providing technical assistance to public water systems serving 10,000 or fewer persons. No less than 1.5% of the annual capitalization grant must be contracted by the department to private organizations or individuals for the purposes of this subsection.

(h) reimburse the expenses, as provided for in 2-18-501 through 2-18-503 and 5-2-302, of the advisory committee established pursuant to 75-6-231 while on official committee business.

(2) Except as provided in subsection (3), money in the fund may not be used for:

(a) expenditures related to monitoring, operation, and maintenance;

(b) the acquisition of real property or any interest in real property, unless the acquisition is integral to a project authorized under this part and the purchase is from a willing seller;

(c) providing assistance to a public water system that:

(i) does not have the financial, managerial, and technical capability to ensure compliance with the requirements of the federal act; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance; or

(d) any other activity prohibited from funding under the federal act.

(3) (a) A public water system described in subsection (2)(c) may receive assistance under this part if:

(i) the use of the assistance will ensure compliance; and

(ii) for a system that the department has determined does not have the financial, managerial, or technical capability to ensure compliance with the federal act, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures, as determined necessary by the department to ensure compliance.

(b) Prior to providing assistance to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance pursuant to the federal act, the department shall determine whether the provisions of subsection (2)(c)(i) apply to the system.

History: **En. Sec. 7, Ch. 553, L. 1995; amd. Sec. 19, Ch. 538, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 538 in (1), near beginning after "fund", substituted "may" for "must"; in (1)(a), before "provided", substituted "make loans to community water systems and nonprofit noncommunity water systems as" for "for providing financial assistance that is in the form of loans and grants to public water systems and that is of the type"; inserted (1)(b) through (1)(h) itemizing the ways in which the money in the revolving fund may be used; deleted former (2)(a) that read: "(2)(a)Financial assistance may be used by a public water system only for expenditures that the U.S. environmental protection agency has determined through its regulations are appropriate. Financial assistance may be used for acquisition, from willing sellers at fair market value, of real property or interests that are integral to establishing a public water system"; at beginning of (2) substituted "Except as provided in subsection (3), money in the fund" for"Financial assistance"; inserted (2)(b) through (2)(d) itemizing things for which the money in the fund may not be used; inserted (3) pertaining to circumstances under which a public water system may receive assistance; and made minor changes in style. Amendment effective May 5, 1997.

75-6-213. Repealed. Sec. 27, Ch. 538, L. 1997.

History: En. Sec. 8, Ch. 553, L. 1995.

75-6-214. Use of funds — statutory appropriation. Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of providing financial assistance to public water systems.

History: En. Sec. 9, Ch. 553, L. 1995; amd. Sec. 54, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 deleted second sentence that read: "Money in the administration account authorized by 75-6-211 is subject to legislative appropriation, and expenditures from this account must be made from temporary appropriations, as described in 17-7-501(1) or (2), that are made for that purpose." Amendment effective July 1, 1997.

75-6-215. Repealed. Sec. 27, Ch. 538, L. 1997.

History: En. Sec. 10, Ch. 553, L. 1995.

75-6-216 through 75-6-220 reserved.

75-6-221. General loan and assistance program. (1) The program may, subject to the requirements in 75-6-222 through 75-6-224, make loans to community water systems and nonprofit noncommunity water systems that:

(a) will facilitate compliance with national primary drinking water regulations pursuant to the federal act; or

(b) will further the health protection objectives of the federal act, including but not limited to projects that involve:

(i) upgrading and replacing infrastructure;

(ii) addressing exceedances of the federal act or preventing future violations;

(iii) consolidating water supplies;

(iv) the acquisition of land, at fair market value, that is integral to the project;

(v) planning and designing of a project; or

(vi) other activities allowed under the federal act.

(2) In addition to loans authorized under subsection (1), the program may make loans to public water systems for one or more of the following purposes:

(a) to a community water system or nonprofit noncommunity water system to acquire land or a conservation easement from a willing party if the land is necessary to ensure compliance with the national primary drinking water regulations or to protect the source of water from contamination;

(b) to a community water system to implement local, voluntary source water protection measures in order to protect source water in areas delineated under a source water assessment program in order to facilitate compliance with the national primary drinking water regulations or otherwise significantly further the health protection objectives of the federal act;

(c) to a community water system to provide funding for the development and implementation of a source water quality assessment, contingency plans, and demonstration projects for partners within a delineated source water area.

(3) The department may:

(a) provide financial and technical assistance to any public water system as part of a capacity development strategy developed and implemented in accordance with the federal act;

(b) make expenditures from the capitalization grant to delineate and assess source water protection areas, provided that funds set aside for such expenditures must be obligated within 4 fiscal years; and

(c) make expenditures from the fund for the establishment and implementation of wellhead protection programs.

(4) The program may provide financial assistance to a public water system according to priorities established by the department in the department's intended use plan adopted pursuant to 75-6-231. Prior to making a loan to a public water system, the department of natural resources and conservation shall determine that the system has the ability to repay the loan according to its terms and conditions and may require a dedicated source of repayment and impose additional requirements.

(5) The total amount of assistance provided and expenditures made by the program under subsections (2) and (3) may not exceed 15% of the amount of the capitalization grant received by the department for that year and may not exceed 10% of that amount for any one of the activities listed under subsection (2) or (3).

History: En. Sec. 11, Ch. 553, L. 1995; amd. Sec. 23, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in (1), at beginning before "subject to", substituted "The program may" for "The department may provide financial assistance in the form of a loan to public water systems owned by a governmental agency, an intergovernmental agency, a nonprofit corporation, an Indian tribe, or any combination of those entities" and after "75-6-224" inserted "make loans to community water systems and nonprofit noncommunity water systems that"; inserted (1)(a) and (1)(b) requiring that loans be made to water systems that facilitate compliance with national primary drinking water regulations or further the health protection objectives of the federal act; inserted (2) authorizing loans to public water systems to acquire land or easements, to implement local, voluntary source protection measures, or to provide funding for certain projects for partners within a delineated source water area; inserted (3) allowing the Department to provide assistance as part of a capacity development strategy and make expenditures to assess source water protection areas and establish wellhead protection programs; in first sentence of (4), at beginning, substituted "The program may provide financial assistance to a public water system" for "The department may provide financial assistance only in the form of a loan to an investor-owned public water system" and at end, after "department", substituted "in the department's intended use plan adopted pursuant to 75-6-231" for "based on greatest public health needs and financial needs", in second sentence, near beginning after "loan to", deleted "an investor-owned" and near middle, after "department", inserted "of natural resources and conservation", and deleted third sentence that read: "A loan to an investor-owned public water system is subject to the requirements of 75-6-222 through 75-6-224"; inserted (5) limiting the total amount of assistance and expenditures made under the program; and made minor changes in style. Amendment effective May 5, 1997.

75-6-222. Evaluation of projects and loan applications. The department and the department of natural resources and conservation shall evaluate projects and loan applications. In evaluating projects and applications, the following factors must be considered:

(1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;

(2) the financial capacity of the applicant;

(3) the financial, managerial, and technical ability of the applicant to properly operate and maintain the project;

(4) the total financing of the project to ensure completion;

(5) the viability of the public water system;

(6) the ability of the public water system to pay the costs of the project without the requested financial assistance;

(7) the total amount of loan funds available for financial assistance in the revolving fund;

(8) the total amount requested by other applications that have been received or that are likely to be received;

(9) the ranking of the project on the priority list in the intended use plan; and

(10) any other criteria that the department determines to be appropriate, considering the purposes of the program and the federal act.

History: En. Sec. 12, Ch. 553, L. 1995; amd. Sec. 24, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 at beginning of first sentence substituted "The department and the department of natural resources and conservation" for "After consultation with the department of natural resources and conservation, the department" and at end, after "projects", substituted "and loan applications" for "for loans and grants and place them on a priority list or intended use plan" and near beginning of second sentence, after "projects", substituted "and applications, the following factors must be considered" for "the department shall consider the following factors"; inserted (1) through (4) requiring consideration of the technical design of the project, financial capacity of the applicant, certain abilities of the applicant, and total financing of the project; in (7), at beginning, substituted "the total amount of loan funds" for "the amount"; in (9) substituted "the ranking of the project on the priority list in the intended use plan" for "the need for and the benefit to be derived from the project"; and made minor changes in style. Amendment effective May 5, 1997.

75-6-223. Applications for loans. (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) a current financial statement of the system showing assets, liabilities, revenue, and expenses;

(g) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations payable from the revenue of the public water system and, if so, a description of the loans, notes, bonds, or other obligations;

(h) if the applicant is a private person, a statement as to whether, at the time of the application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations; and

(i) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to:

(i) engineering reports;

(ii) economic feasibility studies; and

(iii) legal opinions.

(2) Each application for a loan subsidy must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations payable from the revenue of the public water system and, if so, a description of the loans, notes, bonds, or other obligations;

(f) an explanation, including supporting information, as to why a loan subsidy is requested;

(g) evidence that the applicant qualifies as a disadvantaged community; and

(h) any other information that the department or the department of natural resources and conservation may require.

History: En. Sec. 13, Ch. 553, L. 1995; amd. Sec. 25, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in (1), in first sentence near middle after "loan", deleted "and grant"; inserted (1)(f) requiring loan applications to include a current financial statement; in (1)(g), in two places, inserted reference to loans; inserted (1)(h) requiring a private person applicant to include a statement pertaining to outstanding loans, notes, or other obligations; in (2), near beginning before "must include", substituted "loan subsidy" for "grant"; in (2)(d), near end, substituted "loan" for "grant"; in (2)(e), in two places, inserted reference to loans; in (2)(f), after "explanation", inserted "including supporting information" and after "why a" substituted "a loan subsidy" for "a grant rather than a loan"; inserted (2)(g) requiring evidence that the applicant qualifies as a disadvantaged community; and made minor changes in style. Amendment effective May 5, 1997.

75-6-224. Loan conditions. (1) Upon approval of an application by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a public water system to pay part or all of the cost of a project. The loan is subject to the applicant complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment of a dedicated source of revenue and the establishment and maintenance by the applicant of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the public water system or the applicant's financial authority;

(b) in the case of a system owned by a private person, in addition to establishing a dedicated source of revenue, which may include the pledge of accounts receivable, providing, as required by the department of natural resources and conservation, credit enhancements, a pledge of collateral, or other types of security, such as a corporate or personal guarantee;

(c) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(d) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(e) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(f) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(g) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(h) complying with plan, specification, and other requirements for public water systems established by the department;

(i) providing for proper construction inspection and project management; and

(j) meeting requirements of financial, managerial, and technical capability to maintain compliance with the federal act.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date. If the applicant is a disadvantaged community that has qualified and applied for a loan subsidy, the department may determine that the last installment must be received not more than 30 years after the completion date, provided that the period of the loan does not exceed the expected design life of the project.

(3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if timely paid in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-6-225.

(b) The interest rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or variable, may be calculated according to a formula, and may differ from the rate established for any other loans.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the borrower, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a

reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-6-211; or

(b) in the administrative account provided for in 75-6-211. In determining into which account the administrative fees are deposited, the department shall take into consideration the needs and requirements of the programs. Money deposited in the special administrative costs account or the administration account must be used for the payment of administrative costs of the program.

History: En. Sec. 14, Ch. 553, L. 1995; amd. Sec. 26, Ch. 538, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 538 in (1)(a), near middle after "including the establishment", inserted "of a dedicated source of revenue and the establishment"; inserted (1)(b) requiring a private person applicant to provide additional security to a dedicated source of revenue; at end of (1)(c) substituted "the term of the loan" for "20 years"; in (1)(h), after "complying with", substituted "plan, specification, and other requirements" for "plan and specification requirements"and at end, substituted "Department" for "board"; inserted (1)(j) requiring applicants to meet certain capabilities for compliance with the federal act; in (2) inserted second sentence providing a guideline for when the last installment for a loan subsidy may be received; in (5), at end of first sentence, substituted "person" for "concern"; and made minor changes in style. Amendment effective May 5, 1997.

75-6-225. Authorization of bonds — appropriation of proceeds. (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received, the amounts to be used to pay interest on the bonds, or the costs of issuing the bonds, are appropriated to the state allocation account of the revolving fund. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving fund. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the revolving fund and the interest component of the loan repayments credited to the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the power of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, to provide for the rights of the bondholders, and to ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state.

History: En. Sec. 15, Ch. 553, L. 1995.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

75-6-226. Loan subsidy for disadvantaged communities. (1) Notwithstanding any other provision in this part, if the program makes a loan pursuant to 75-6-221(1) to a disadvantaged community or to a community that the department expects to become a disadvantaged community as a result of a proposed project, the department may provide additional subsidization in the form of a reduced interest rate.

(2) The total annual amount of loan subsidies made by the department pursuant to subsection (1) may not exceed 30% of the capitalization grant received by the department for each fiscal year.

History: En. Sec. 20, Ch. 538, L. 1997.

Compiler's Comments

Effective Date: Section 30(1) provided: "[This act] is effective on passage and approval." Approved May 5, 1997.

75-6-227 through 75-6-230 reserved.

75-6-231. Intended use plan — advisory committee. (1) The department shall prepare an annual intended use plan for the state that meets the requirements of section 300j-12(b) of the federal act (42 U.S.C. 300j-12(b)).

(2) The intended use plan must include:

(a) a list of projects in the state that are eligible for assistance, including both the priority assigned to each project based on public health needs and on the financial needs of the project and, to the extent known, the expected funding schedule for each project; and

(b) a description of the funds to be allocated to activities under 75-6-212 and 75-6-221(2) and funds to be transferred to or received by the water pollution control state revolving fund, as allowed in 75-6-211(5), for the annual fiscal period following publication of the intended use plan.

(3) Before finalizing an intended use plan, the department shall prepare a draft document containing the information required in subsection (2) and shall provide public notice and opportunity to comment on the draft document.

(4) (a) Following the public comment period provided for in subsection (3) and any department modifications to the intended use plan resulting from the public comment, a summary of the public comment and the intended use plan must be presented for review, comment, and recommendations to an advisory committee formed by the department and consisting of six individuals from the following entities appointed by their respective presiding officers, directors, or executive officials:

(i) one member from the Montana league of cities and towns;

(ii) one member from the Montana association of counties;

(iii) one member from the department of natural resources and conservation;

(iv) one member from the department of environmental quality; and

(v) two members from the joint legislative subcommittee on natural resources. One member must be from the house of representatives and one from the senate, and they may not represent the same political party.

(b) The advisory committee is attached to the department for administrative purposes only.

(5) The department shall address in writing any comments and recommendations provided by the advisory committee provided for in subsection (4) before finalizing an intended use plan and prior to awarding any contracts under 75-6-212(1)(g).

History: En. Sec. 21, Ch. 538, L. 1997.

Compiler's Comments

Effective Date: Section 30(1) provided: "[This act] is effective on passage and approval." Approved May 5, 1997.

75-6-232. Insurance and guarantee program. (1) The revolving fund may be used to purchase insurance for or guarantee the timely payment of principal and interest on a debt obligation issued by a municipality if the department of natural resources and conservation determines that the guarantee or insurance would improve the credit market access of the municipality or reduce the interest rate on the municipal obligation.

(2) The department of natural resources and conservation shall adopt rules setting forth the conditions under which the program will guarantee or insure municipal obligations, including the amount of fees to be charged for the guarantee or the purchase of insurance and the amount of reserves, if any, to be established in the fund to cover any guarantee. The program may not be used to guarantee a municipal obligation for a project or municipality not meeting the requirements of 75-6-224, except to the extent that they are inconsistent with the guarantee.

History: En. Sec. 22, Ch. 538, L. 1997.

Compiler's Comments

Effective Date: Section 30(1) provided: "[This act] is effective on passage and approval." Approved May 5, 1997.

CHAPTER 7

AQUATIC ECOSYSTEM PROTECTIONS

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Chapter Cross-References

Wetlands Protection Advisory Council, 2-15-3405.

Smith River Management Act, Title 23, ch. 2, part 4.

Proceeds from waterfowl stamp for wetlands protection, 87-2-412.

Part 1

Streambeds

Part Cross-References

Ferrykeepers to keep banks of streams at landings in good repair, 7-14-2826.

Fish, Wildlife, and Parks Commission to adopt rules for protection of streams from adverse recreational use, 23-2-302.

Construction of pipelines across streams, 69-13-103.

Construction of railroads across streams, 69-14-532.

Watercourses — accretion and reclamation of banks, Title 70, ch. 18, part 2.

Failure to issue mining permit — protection of streambeds, Title 82, ch. 4, part 2.

Metal mine reclamation, Title 82, ch. 4, part 3.

Water conservancy districts — flow regulation, 85-9-102.

Fishing access sites and frontages — funds for recreational use, 87-1-605.

Stream protection of fish and wildlife resources — plans for construction or hydraulic projects, Title 87, ch. 5, part 5.

75-7-101. Short title. This part may be cited as "The Natural Streambed and Land Preservation Act of 1975".

History: En. 26-1510 by Sec. 1, Ch. 463, L. 1975; R.C.M. 1947, 26-1510.

75-7-102. Policy. It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.

History: En. 26-1511 by Sec. 2, Ch. 463, L. 1975; R.C.M. 1947, 26-1511.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Beneficial use defined, 85-2-102.

Adjudication of water rights, Title 85, ch. 2, part 2.

Policy for protection of fish and wildlife resources in streams, 87-5-501.

75-7-103. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;

(b) a grass conservation district under Title 76, chapter 16, where a conservation district does not exist; or

(c) the board of county commissioners in a county where a district does not exist.

(4) "Person" means any individual, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) (a) "Project" means a physical alteration or modification of a stream in the state of Montana that results in a change in the state of the stream.

(b) Project does not include:

(i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.

(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102.

(6) "Stream" means any natural perennial-flowing stream or river, its bed, and its immediate banks except a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102.

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative.

(9) "Written consent of the supervisors" means a written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project.

History: En. 26-1512 by Sec. 3, Ch. 463, L. 1975; R.C.M. 1947, 26-1512; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 551, L. 1987; amd. Sec. 1, Ch. 426, L. 1995.

Cross-References

Composition of Board of County Commissioners, 7-4-2101.

Conservation district supervisors, Title 76, ch. 15.

Grass Conservation Act, Title 76, ch. 16.

75-7-104. Vested water rights preserved. This part shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

History: En. 26-1516 by Sec. 7, Ch. 463, L. 1975; R.C.M. 1947, 26-1516.

Cross-References

Existing water rights protected, Art. IX, sec. 3, Mont. Const.

75-7-105. Application of floodplain management. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, chapter 5, parts 1 through 4, floodway management and regulation, where designated floodplains or designated floodways have been established in accordance with that chapter.

History: En. 26-1519 by Sec. 10, Ch. 463, L. 1975; R.C.M. 1947, 26-1519.

75-7-106. Junked motor vehicles as reinforcement prohibited — penalty. (1) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between the channel banks of any stream or to reinforce banks of a stream with junked motor vehicles or the body portion of junked motor vehicles.

(2) A person who violates subsection (1) is subject to penalties as provided in 75-7-123.

History: (1)En. 69-6811 by Sec. 1, Ch. 112, L. 1975; amd. Sec. 19, Ch. 140, L. 1977; Sec. 69-6811, R.C.M. 1947; (2), (3)En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; Sec. 69-6812, R.C.M. 1947; R.C.M. 1947, 69-6811, 69-6812(part); amd. Sec. 2, Ch. 426, L. 1995.

Cross-References

Ordinary high-water mark defined, 23-2-301.

Venue for action arising on stream, 25-2-124.

Execution of criminal fine, 46-19-102.

Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

75-7-107 through 75-7-110 reserved.

75-7-111. Notice of project. (1) A person planning to engage in a project shall present written notice of the proposed project to the supervisors before any portion of the project takes place.

(2) The notice must include the location, general description, and preliminary plan of the project.

(3) At the time of filing a notice of the proposed project under subsection (1), the applicant shall sign an arbitration agreement as provided in 75-7-117.

(4) The district may authorize a representative to accept notices of proposed projects.

History: En. 26-1513 by Sec. 4, Ch. 463, L. 1975; R.C.M. 1947, 26-1513; amd. Sec. 3, Ch. 426, L. 1995.

Cross-References

Removal of obstructions caused by beaver and beaver dams, 87-1-224.

75-7-112. Procedure for considering projects — team. (1) Upon acceptance of a notice of a proposed project, the district or the district's authorized representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the department requests an onsite inspection by a team.

(2) The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified in this subsection, the supervisors may deny, approve, or modify the project.

(3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(4) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(5) When a member of the team disagrees with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision regarding the dispute.

(6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within 15 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work may not be commenced on a project before the end of the 15-day waiting period unless written permission is given by all team members and the district.

(7) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately of any subsequent time extensions.

(8) Work on a project under this part may not take place without the written consent of the supervisors.

(9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:

(a) the purpose of the project; and

(b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:

(i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;

(ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;

(iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;

(iv) the effects on stream channel alteration;

(v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and

(vi) the effect on fish and aquatic habitat.

(10) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification.

(11) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means.

History: En. 26-1514 by Sec. 5, Ch. 463, L. 1975; amd. Sec. 1, Ch. 140, L. 1977; R.C.M. 1947, 26-1514; amd. Sec. 4, Ch. 426, L. 1995.

75-7-113. Emergencies — procedure. (1) The provisions of this part do not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a taking action under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The emergency notice given under subsection (1) must contain the following information:

(a) the location of the action taken;

(b) a general description of the action taken;

(c) the date on which the action was taken; and

(d) an explanation of the emergency causing the need for the action taken.

(3) If the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

(4) A team, called together as described in 75-7-112(2), shall make an onsite inspection within 20 days of receipt of the emergency notice.

(5) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, denial, approval, or modification of the project.

(6) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice.

(7) A person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.

(8) When a member of the team disagrees with the supervisors' decision of an emergency action, the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute.

(9) The failure of a person to perform the following subjects the person to civil and criminal penalties under 75-7-123:

(a) failure to provide emergency notice under subsection (1);

(b) failure to submit a notice of the project under subsection (7); or

(c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation.

History: En. 26-1517 by Sec. 8, Ch. 463, L. 1975; amd. Sec. 2, Ch. 140, L. 1977; R.C.M. 1947, 26-1517; amd. Sec. 5, Ch. 426, L. 1995.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-114. Arbitration panel — selection. The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members must be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the arbitration agreement and the policy set forth in 75-7-102.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(1); amd. Sec. 6, Ch. 426, L. 1995.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-115. Arbitration panel — costs. Cost of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(2).

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-116. Modification of plan — assignment of costs. (1) If the final decision of the arbitration panel requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

(2) Any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision.

History: En. 26-1518 by Sec. 9, Ch. 463, L. 1975; R.C.M. 1947, 26-1518.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-117. Rules — minimum standards — arbitration agreement. (1) The department of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may revise rules setting minimum standards and guidelines for the purposes of this part.

(2) The supervisors of each district shall adopt and may revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts that meet, exceed, or are not covered by the minimum standards set by the department under subsection (1).

(3) The department of natural resources and conservation, after consultation with the association of conservation districts, shall prepare an arbitration agreement for use by the conservation districts. The arbitration agreement must contain provisions for:

(a) the appointment of arbitrators;

(b) the exercise of power by the arbitrators;

(c) an arbitration hearing process, including time and place for hearing, notification, presentation of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or change of award; and

(d) the fees and expenses of arbitration.

History: En. 26-1520 by Sec. 11, Ch. 463, L. 1975; R.C.M. 1947, 26-1520; amd. Sec. 2, Ch. 551, L. 1987; amd. Sec. 189, Ch. 418, L. 1995; amd. Sec. 7, Ch. 426, L. 1995.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4.

75-7-118 through 75-7-120 reserved.

75-7-121. Review. Any review of final action by the supervisors under 75-7-112 or 75-7-113 must be by arbitration. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3.

History: En. 26-1521 by Sec. 12, Ch. 463, L. 1975; R.C.M. 1947, 26-1521; amd. Sec. 8, Ch. 426, L. 1995.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

District Courts, Title 3, ch. 5.

Venue for action arising on stream, 25-2-124.

75-7-122. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval or activities performed outside the scope of written consent of the supervisors, as prescribed in this chapter, is declared a public nuisance and subject to proceedings for immediate abatement.

History: En. 26-1522 by Sec. 13, Ch. 463, L. 1975; R.C.M. 1947, 26-1522; amd. Sec. 9, Ch. 426, L. 1995.

Cross-References

Obstruction of rivers and streams as nuisance, 27-30-101.

Action to abate public nuisance, 27-30-202.

Criminal code — public nuisance, 45-8-111.

75-7-123. Penalties — restoration. A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500 or by a civil penalty not to exceed $500 for each day that person continues to physically alter or modify the stream, and in addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(1); amd. Sec. 1, Ch. 255, L. 1993; amd. Sec. 10, Ch. 426, L. 1995.

Cross-References

Venue for action arising on stream, 25-2-124.

Execution of criminal fine, 46-19-102.

Restoration of damaged streams, 87-5-509.

75-7-124. Violation of time provisions — penalty. Any person or entity who violates the time provisions of this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of $5 per day.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(2).

Cross-References

Execution of criminal fine, 46-19-102.

Part 2

Lakeshores

Part Cross-References

Recreational use of lakes not addressed, 23-2-310.

Water conservancy districts — level regulation, 85-9-102.

Recreational use — rules, 87-1-303.

Frontages — funds for recreational uses, 87-1-605.

75-7-201. Policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this part to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

History: En. 89-3701 by Sec. 1, Ch. 527, L. 1975; R.C.M. 1947, 89-3701.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-7-202. Definitions. As used in this part, the following definitions apply:

(1) "Lake" means a body of standing water and the area within its lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation as such averages are determined by the United States geological survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation.

(3) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this part.

(4) "Mean annual high-water elevation" is the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

Cross-References

Montana Subdivision and Platting Act — governing body, 76-3-103.

75-7-203. Change in definition of lake by local government. A local governing body may by resolution change the minimum size in the definition of a lake so that this part may apply to natural lakes in the county no smaller than 20 acres in water surface area.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

75-7-204. Work for which permit required. (1) A person who proposes to do any work that will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body.

(2) Without limitation, the following activities, when conducted below mean annual high-water elevation, are examples of work for which a permit is

required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning, meaning the placement of a narrow strip of land across a portion of a lake to create a lagoon; filling; constructing breakwaters of pilings; constructing wharves and docks.

History: En. 89-3703 by Sec. 3, Ch. 527, L. 1975; R.C.M. 1947, 89-3703; amd. Sec. 8, Ch. 68, L. 1979.

75-7-205. Unauthorized work. A person who performs work in a lake after May 1, 1975, without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before he disturbed it.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(1).

Cross-References

Nuisance, Title 27, ch. 30.

Criminal code — public nuisance, 45-8-111.

75-7-206. Nature of property rights under part. Work or development authorized or approved under this part shall not create a vested property right in the permitted development other than in the physical structure, if any, so developed.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(2).

75-7-207. Regulations for issuance of permits. (1) Before January 1, 1976, every governing body having jurisdiction over an area containing a lake shall adopt regulations in the form of criteria for the issuance or denial of permits for work in lakes.

(2) Where a planning board has been created under 76-1-104 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this part.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

(5) The requirements of 75-7-208 are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(1), (3) thru (5).

Cross-References

Montana Subdivision and Platting Act — local governing body, 76-3-103.

75-7-208. Factors favoring issuance of permit. The regulations shall favor issuance if the proposed work will not during either its construction or its utilization:

(1) materially diminish water quality;

(2) materially diminish habitat for fish or wildlife;

(3) interfere with navigation or other lawful recreation;

(4) create a public nuisance; or

(5) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(2).

Cross-References

Water quality classifications and standards, Title 75, ch. 5, part 3.

75-7-209. Regulations for particular lake. Upon petition of five owners or 30% of the owners of land abutting a lake, whichever is smaller, the department of natural resources and conservation may adopt regulations under 75-7-207 and 75-7-208 for the particular lake. The department may then exercise the powers conferred upon a local governing body by this part until the governing body adopts the necessary regulations.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(6).

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-7-210. Application for permit — fee — limitations. (1) A person seeking a permit for work in a lake or on a lakeshore shall apply to the local governing body and shall pay a permit fee established by the governing body under subsection (2).

(2) (a) The local governing body shall establish a permit fee as provided in subsection (1). The permit fee must reasonably address the cost of administering the permit application. Factors the local governing body shall consider when establishing the fee include but are not limited to:

(i) the annual estimated total number of permit requests;

(ii) the complexity of the specific project;

(iii) the need for and location and number of onsite investigations; and

(iv) the estimated cost of the specific project.

(b) The fees established in this subsection may not exceed the following limits:

(i) $25 for residential permits not requiring a variance from the local governing authority;

(ii) $60 for residential permits requiring a variance from the local governing authority;

(iii) $60 for commercial permits not requiring a variance from the local governing authority; and

(iv) $150 for commercial permits requiring a variance from the local governing authority.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part); amd. Sec. 1, Ch. 648, L. 1991.

75-7-211. Consultation with local planning board. (1) Where a planning board has been created under 76-1-104 for the area containing the lake in question, the governing body shall seek the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit and may require the applicant to submit additional information before the board reports its recommendations.

(2) In areas where a planning board is not established, the functions of a planning board under this section shall be exercised by the local governing body.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part).

Cross-References

Montana Subdivision and Platting Act — governing body, 76-3-103.

75-7-212. Issuance of permit. (1) Unless the applicant agrees to an extension of time, the governing body shall grant or deny permission for the work within 90 days of receiving an application for a permit.

(2) If the governing body finds that the proposed work conforms to the criteria for issuing a permit, it shall issue a permit or conditional permit.

(3) If the governing body finds that the work does not conform to the criteria, it shall deny the application.

History: En. 89-3706 by Sec. 6, Ch. 527, L. 1975; R.C.M. 1947, 89-3706.

75-7-213. Variance procedure. A governing body which proposes to grant a variance from its regulations under this part shall first prepare an environmental impact statement, at the expense of the applicant, which conforms to the requirements of regulations adopted pursuant to this part, distribute this statement to interested residents, and conduct a public hearing on the proposed action.

History: En. 89-3707 by Sec. 7, Ch. 527, L. 1975; R.C.M. 1947, 89-3707.

Cross-References

Environmental impact statements, 75-1-201.

75-7-214. Cooperation between governing bodies. If a lake, as defined by this part, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this part and establish compatible criteria for denial or issuance of permits.

History: En. 89-3709 by Sec. 9, Ch. 527, L. 1975; R.C.M. 1947, 89-3709.

75-7-215. Judicial enforcement and review. The district court may hear and decide the following cases arising under this part within the district:

(1) a complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake;

(2) a petition of an interested person for review of a final action of a governing body upon an application for a permit;

(3) a petition of an interested person for review of an action of a governing body in adopting or amending regulations.

History: En. 89-3710 by Sec. 10, Ch. 527, L. 1975; R.C.M. 1947, 89-3710.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

District Courts, Title 3, ch. 5.

Venue for actions arising from lake dispute, 25-2-124.

Injunctions, Title 27, ch. 19.

Mandamus, Title 27, ch. 26.

75-7-216. Penalty. (1) A person who violates an order issued under this part or who knowingly violates a regulation made under this part commits a misdemeanor and on conviction may be sentenced to 30 days in the county jail or fined $500, or both.

(2) Fines collected under this section, except those collected in a justice's court, shall be paid to the general fund of the county where the offense was committed for the purpose of administering this part.

History: **En. 89-3711 by Sec. 11, Ch. 527, L. 1975; R.C.M. 1947, 89-3711; amd. Sec. 44, Ch. 557, L. 1987.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Execution of criminal fine, 46-19-102.

75-7-217. Funding. In compliance with 1-2-112, the administration of this part is declared a public purpose of a city or county which may be paid out of permit application fees collected under 75-7-210 and federal revenue sharing moneys.

History: **En. 89-3712 by Sec. 12, Ch. 527, L. 1975; R.C.M. 1947, 89-3712.**

Part 3

Flathead Basin Commission

Part Cross-References

Establishment and organization of Flathead Basin Commission and staff, 2-15-213 through 2-15-215.

75-7-301. Short title. This part may be cited as the "Flathead Basin Commission Act of 1983".

History: **En. Sec. 1, Ch. 424, L. 1983.**

75-7-302. Purpose. The purpose of the Flathead basin commission is to protect the existing high quality of the Flathead Lake aquatic environment; the waters that flow into, out of, or are tributary to the lake; and the natural resources and environment of the Flathead basin.

History: **En. Sec. 2, Ch. 424, L. 1983.**

75-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Aquatic resources" means all beneficial uses of water, including but not limited to water quality and water supply; recreational, scenic, and aesthetic values; and fish, wildlife, and other organisms.

(2) "Commission" means the Flathead basin commission established in 2-15-213.

(3) "Flathead basin" means all land and water areas the water from which drains into Flathead Lake or its tributaries.

History: **En. Sec. 3, Ch. 424, L. 1983.**

75-7-304. Duties of the commission. Duties of the commission are:

(1) to monitor the existing condition of natural resources in the basin and coordinate development of an annual monitoring plan. This plan must involve a cooperative strategy among all land and water management agencies within the Flathead basin and identify proposed and needed monitoring which emphasizes but is not limited to the aquatic resources of the Flathead basin.

(2) to encourage close cooperation and coordination between federal, state, provincial, tribal, and local resource managers for establishment of compatible resource development standards, comprehensive monitoring, and data collection and interpretation;

(3) to encourage and work for international cooperation and coordination between the state of Montana and the Province of British Columbia concerning the undertaking of natural resource monitoring and use of consistent standards

for management of resource development activities throughout the North Fork Flathead River drainage portion of the Flathead basin;

(4) to encourage economic development and use of the basin's resources to their fullest extent without compromising the present high quality of the Flathead basin's aquatic environment;

(5) to, in the discretion of the commission, undertake investigations of resource utilization and hold public hearings concerning the condition of Flathead Lake and Flathead basin;

(6) to submit to the governor and, as provided in 5-11-210, to the legislature a biennial report that includes:

(a) a summary of information gathered in fulfillment of its duties under this section;

(b) information on monitoring activities within the Flathead basin concerning the condition of the basin's natural resources, with particular emphasis on Flathead Lake;

(c) the identification of land use and land development trends in the Flathead basin;

(d) any recommendations the commission considers appropriate for fulfillment of its duties and for continued preservation of the Flathead basin in the present high quality of its aquatic resources; and

(e) an accounting of all money received and expended, by source and purpose, for the period since the last report; and

(7) to meet at least semiannually within the Flathead basin, alternating the meeting site between the cities of Kalispell and Polson.

History: En. Sec. 7, Ch. 424, L. 1983; amd. Sec. 49, Ch. 112, L. 1991.

75-7-305. Commission authority. (1) The commission may make recommendations to the legislature and the governor and to federal, tribal, provincial, and local agencies for maintenance and enhancement of the quality of natural resources of the Flathead basin.

(2) The commission may receive and expend donations, gifts, grants, and other money necessary to fulfill its duties.

History: En. Sec. 8, Ch. 424, L. 1983; amd. Sec. 1, Ch. 244, L. 1985; amd. Sec. 9, Ch. 628, L. 1989.

75-7-306. Establishment of account. There is established in the state special revenue fund a Flathead basin commission account. Money received by the Flathead basin commission under 75-7-305 and such other funds as are designated or appropriated for its use must be deposited in the account.

History: En. Sec. 9, Ch. 424, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 7, Ch. 700, L. 1989.

Cross-References

Fund structure, 17-2-102.

75-7-307. Special county government authority. The governing body of any county within or bordering upon the Flathead basin may allocate to the Flathead basin commission a portion of any money available from coal severance tax allocations or other sources and designated for planning activities.

History: En. Sec. 10, Ch. 424, L. 1983.

75-7-308. Cooperation with other agencies and organizations. To fulfill its duties, the commission shall develop and maintain cooperative programs with federal, state, provincial, tribal, and local agencies or organizations that are responsible for natural resource management and monitoring in the Flathead basin. Participating federal and provincial agencies must be requested to provide adequate funds to participate on the commission and to monitor resources within their areas of responsibility.

History: En. Sec. 11, Ch. 424, L. 1983.

Part 4

Phosphorus Compounds — Model Rule

75-7-401. Adoption and amendment of model rule on sale and distribution of certain phosphorus compounds. (1) The department of environmental quality shall adopt a model rule to provide standards that counties may adopt under 75-7-411 to prohibit the sale and distribution of certain phosphorus compounds used for cleaning.

(2) The standards in the model rule must be designed to protect water quality and aquatic ecosystems by reducing the amount of phosphorus that will enter state waters.

(3) The department may amend the model rule to:

(a) reflect changing technology related to phosphorus compounds in cleaning products;

(b) incorporate new findings about the impacts of phosphorus compounds on water quality; or

(c) respond to other relevant information.

(4) The department shall follow the procedures of Title 2, chapter 4, part 3, in adopting or amending the model rule.

History: En. Sec. 1, Ch. 574, L. 1985; amd. Sec. 190, Ch. 418, L. 1995.

Cross-References

Department of Environmental Quality, Title 2, ch. 15, part 35.

Counties, Title 7, ch. 1, part 21.

County resolutions, Title 7, ch. 5, part 22.

Water quality, Title 75, ch. 5.

75-7-402. Distribution of model rule. The department shall send to the governing body of each county a notice of any rulemaking proceeding or hearing under 75-7-401, a copy of the model rule, and a copy of any amendment proposed or adopted.

History: En. Sec. 3, Ch. 574, L. 1985.

Cross-References

Department of Environmental Quality, Title 2, ch. 15, part 35.

Counties, Title 7, ch. 1, part 21.

County resolutions, Title 7, ch. 5, part 22.

Water quality, Title 75, ch. 5.

75-7-403. Prohibition of enforcement by department. The department may not enforce any standard or provision of the model rule. As provided in 75-7-411, the governing body of a county may adopt and enforce as an ordinance the standards contained in the model rule.

History: En. Sec. 2, Ch. 574, L. 1985.

Cross-References

Department of Environmental Quality, Title 2, ch. 15, part 35.

Counties, Title 7, ch. 1, part 21.

County resolutions, Title 7, ch. 5, part 22.

Water quality, Title 75, ch. 5.

75-7-404 through 75-7-410 reserved.

75-7-411. County regulation of sale and distribution of certain phosphorus compounds. (1) The governing body of a county may adopt, through the procedures of 7-5-103 through 7-5-107, an ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes. The governing body may rescind, modify, or repeal the ordinance at any time by use of the same procedures.

(2) An ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes may be adopted only if:

(a) the county has a natural lake, whether or not it is fitted with a dam, for which the department of environmental quality or the governing body of the county has determined that eutrophication enhanced by human activity is occurring and that phosphorus is the limiting factor; and

(b) other efforts are being undertaken in the county to reduce the amount of phosphorus entering surface waters.

(3) Any ordinance adopted by the governing body of a county must contain standards designated by the model rule adopted by the department of environmental quality under 75-7-401 and in effect at the time of the adoption of the county ordinance.

(4) Any ordinance adopted by the governing body of a county must be enforced by the county.

History: En. Sec. 4, Ch. 574, L. 1985; amd. Sec. 191, Ch. 418, L. 1995.

Cross-References

Department of Environmental Quality, Title 2, ch. 15, part 35.

Counties, Title 7, ch. 1, part 21.

County resolutions, Title 7, ch. 5, part 22.

Water quality, Title 75, ch. 5.

75-7-412. Penalty. (1) A person involved in the sale or commercial distribution of any phosphorus compound prohibited by an ordinance adopted under 75-7-411 must be notified by the county and must be given 30 days from receipt of such notice to comply with the ordinance. Failure to comply with the ordinance following this 30-day period is a misdemeanor. Each day of violation is a separate offense.

(2) The penalty provided for in subsection (1) applies only to persons engaged in the sale or commercial distribution of prohibited phosphorus compounds. The county may not prosecute or otherwise penalize a person for using a phosphorus compound regulated by an ordinance adopted under 75-7-411.

History: En. Sec. 5, Ch. 574, L. 1985.

Cross-References

Misdemeanor penalty when no penalty specified, 46-18-212.

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75-10-944. Order not stayed by appeal — stay or suspension by court — limitations.
75-10-945. Surety bond.
75-10-946 through 75-10-949 reserved.
75-10-950. Definitions.
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Part 10 — Infectious Waste Management Act

75-10-1001. Short title.
75-10-1002. Purpose.
75-10-1003. Definitions.
75-10-1004. Prohibition.
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75-10-1006. Licensing and regulation — rulemaking authority.

Part 11 — Notice of Motor Oil Recycling Center

75-10-1101. Waste oil notice.

Chapter Cross-References

County control of litter, 7-5-2109.

Refuse disposal districts, Title 7, ch. 13, part 2.

Regulation of cesspool, septic tank, and privy cleaners, Title 37, ch. 41.

Littering on highways prohibited, 61-8-365.

Pesticides, Title 80, ch. 8.

Memorandum of agreement with Department of Agriculture, 80-8-110.

Forfeiture of hunting or fishing license for littering, 87-2-112.

Part 1
Plans, Funds, and Administration

75-10-101. Purpose. The purpose of this part is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes where economically feasible and to provide a coordinated state solid waste and resource recovery plan.

History: En. 69-4012 by Sec. 2, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part).

75-10-102. Public policies. (1) To implement this part, the following are declared to be public policies of this state:

(a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.

(b) Solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.

(c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.

(d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to assure effective solid waste management systems throughout the state.

(e) Costs for the management and regulation of solid waste management systems should be charged to those persons generating solid waste in order to encourage the reduction of the solid waste stream.

(f) Encouragement and support be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of such wastes for reuse.

(g) The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.

(h) Actions and activities performed or carried out by persons and their contractors in accordance with this part shall be in conformity with the state solid waste plan.

(i) When licensing a solid waste management system, the department shall consult with units of local government that have jurisdiction over the area encompassing the proposed system.

(2) This part is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law.

History: En. 69-4012, 69-4019 by Secs. 2, 9, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part), 69-4019; amd. Sec. 1, Ch. 215, L. 1991; amd. Sec. 2, Ch. 643, L. 1991.

Cross-References

Beauty of state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Solid waste management districts, Title 7, ch. 13, part 2.

Regulation of cesspool, septic tank, and privy cleaners, Title 37, ch. 41.

75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

(i) is located in a fifth-, sixth-, or seventh-class county, as defined in 7-1-2111;

(ii) receives no more than 3,000 tons of waste each year;

(iii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iv) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(7) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(9) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(11) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(12) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part.

History: **En. 69-4013 by Sec. 3, Ch. 575, L. 1977; R.C.M. 1947, 69-4013; amd. Sec. 1, Ch. 482, L. 1981; amd. Sec. 1, Ch. 213, L. 1991; amd. Sec. 1, Ch. 201, L. 1993; amd. Sec. 192, Ch. 418, L. 1995; amd. Secs. 526, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 372, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 372 in definition of container site inserted (b) establishing criteria for a site that receives waste from waste collection vehicles; and made minor changes in style. Amendment effective July 1, 1997.

75-10-104. Duties of department. The department shall:

(1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the solid waste management fee to which a facility is subject under 75-10-118, methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(e) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-118; and

(f) providing guidelines for integrated waste management;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and conditionally exempt small quantities of hazardous waste as defined in ARM 16.44.402;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part;

(8) approve plans for a proposed solid waste management system submitted by a local government; and

(9) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility.

History: **En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(1); amd. Sec. 10, Ch. 696, L. 1989; amd. Sec. 8, Ch. 222, L. 1991; amd. Sec. 2, Ch. 398, L. 1991; amd. Sec. 3, Ch. 643, L. 1991; amd. Sec. 1, Ch. 145, L. 1993.**

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-105. Powers of department. The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;

(3) make grants for a local government for planning or implementation of a solid waste management system; and

(4) collect the solid waste management fee provided for in 75-10-118.

History: En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(2); amd. Sec. 2, Ch. 482, L. 1981; amd. Sec. 11, Ch. 696, L. 1989; amd. Sec. 3, Ch. 398, L. 1991; amd. Sec. 2, Ch. 145, L. 1993.

75-10-106. Duties of board. The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and

(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the following:

(a) submission of plans for a solid waste management system;

(b) the procedures to be followed in applying for and making loans and grants;

(c) the requirements for eligibility for grants; and

(d) the agreements between the local government and the department for grants and loans under this part.

History: En. 69-4015 by Sec. 5, Ch. 575, L. 1977; R.C.M. 1947, 69-4015; amd. Sec. 3, Ch. 482, L. 1981.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4, part 3.

75-10-107. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information

from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 3, Ch. 471, L. 1995.

75-10-108 and 75-10-109 reserved.

75-10-110. Repealed. Sec. 1, Ch. 273, L. 1993.

History: En. Sec. 3, Ch. 696, L. 1989.

75-10-111. State solid waste management plan — hearings and action. (1) A proposed solid waste management plan shall be prepared by the department in conjunction with local governments in the state and any other interested person. After a draft of a proposed solid waste management plan has been prepared, the department shall circulate a copy of the proposed plan to the board of county commissioners in each county in the state, the governing body of every incorporated city or town in the state, any person responsible for the operation of a solid waste management system under the provisions of parts 1 and 2, chapter 10 of this title, the governor, the environmental quality council, and any other interested person for at least 90 days prior to submission of a final proposed solid waste management plan to the board. During the 90-day period for receipt of comments on the draft plan, the department shall hold at least three public hearings around the state on the draft plan.

(2) A final proposed plan shall be prepared based on the comments and objections received at the public hearings and from the persons who have submitted comments on the draft solid waste management plan. The final plan submitted to the board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected. The board shall consider the final proposed solid waste management plan after giving notice and holding at least one public hearing pursuant to the rulemaking procedures outlined in the Montana Administrative Procedure Act.

History: En. 69-4016 by Sec. 6, Ch. 575, L. 1977; R.C.M. 1947, 69-4016.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4, part 3.

Environmental Quality Council, Title 75, ch. 1, part 3.

75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs, for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites.

History: En. 69-4017 by Sec. 7, Ch. 575, L. 1977; R.C.M. 1947, 69-4017; amd. Sec. 3, Ch. 145, L. 1993; amd. Sec. 3, Ch. 201, L. 1993.

Cross-References

County taxation, Title 7, ch. 6, part 25.

Municipal taxation, Title 7, ch. 6, part 44.

75-10-113. User's fee assessed. In the event the revenues of a solid waste management system are insufficient to pay the costs, a local government may levy a pro rata fee against the users of the solid waste management district. The pro rata fee shall be based on a per ton, per pound, or volume assessment.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(6); amd. Sec. 9, Ch. 68, L. 1979.

75-10-114 reserved.

75-10-115. Solid waste management fee. (1) The department may establish and collect fees for the management and regulation of solid waste disposal. These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility;

(b) an annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal and based upon the following formula:

(i) for a major facility with a planned capacity of more than 25,000 tons of solid waste a year, $3,500;

(ii) for an intermediate facility with a planned capacity of more than 5,000 tons a year but not more than 25,000 tons a year, $3,000;

(iii) for a minor facility with a planned capacity of not more than 5,000 tons a year, $2,500; and

(c) a volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-10-117.

History: En. Sec. 1, Ch. 696, L. 1989; amd. Sec. 4, Ch. 643, L. 1991.

75-10-116. Penalties for failure to pay fee. A person who owns a solid waste disposal facility subject to a fee under 75-10-118 and fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

History: En. Sec. 4, Ch. 696, L. 1989; amd. Sec. 4, Ch. 398, L. 1991; amd. Sec. 4, Ch. 145, L. 1993.

75-10-117. Solid waste management account. (1) There is a solid waste management account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the solid waste management fee provided for in 75-10-118; and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source, intended to be used for the purposes of the account.

(3) The account may be used by the department only for the administration of part 2, this part, and 75-2-215.

History: En. Sec. 2, Ch. 696, L. 1989; amd. Sec. 5, Ch. 398, L. 1991; amd. Sec. 5, Ch. 145, L. 1993.

75-10-118. Solid waste management fee — out-of-state waste. (1) Notwithstanding the fee established pursuant to 75-10-204(8) and except as provided in subsection (2) of this section, a person who owns an incinerator that burns solid waste or a solid waste disposal facility that is licensed pursuant to 75-10-221 and to rules adopted under 75-10-221 shall pay to the department a quarterly fee of $5 for each ton of solid waste generated outside Montana and incinerated or disposed of at the facility.

(2) A person who owns a solid waste disposal facility that is licensed pursuant to 75-10-221 and to rules adopted under 75-10-221 that receives less than 25,000 tons of solid waste annually shall pay the department a quarterly fee, determined by the department pursuant to 75-10-204(8), for each ton of solid waste generated outside Montana.

(3) All fees must be deposited in the solid waste management account provided for in 75-10-117.

History: En. Sec. 1, Ch. 398, L. 1991; amd. Sec. 2, Ch. 273, L. 1993.

75-10-119 and 75-10-120 reserved.

75-10-121. Solid waste management loans — requisites. (1) The department may, in the name of the state of Montana, enter into agreements with a local government for loans, subject to any existing contractual obligations of the local government.

(2) A loan agreement must include but not be limited to the following:

(a) the amount of the loan, not to exceed the estimated reasonable amount of the total implementation cost, excluding equipment, construction, or land acquisition as determined by the department;

(b) an agreement by the department to pay part of the amount of the loan to the local government on a timetable as may be agreed upon by the parties;

(c) an agreement by the local government to proceed with the solid waste management system in accordance with plans approved by the department;

(d) an agreement by the local government to commence operation of the solid waste management system on its completion and not to discontinue operations or dispose of the solid waste management system without the approval of the department;

(e) an agreement by the local government to operate and maintain a solid waste management system in accordance with applicable provisions of part 2 of this chapter and rules of the department;

(f) an agreement by the local government to pledge any available sources of revenue to the repayment of loans according to the schedule established by the department. Any revenues from the sale of energy or recycled materials recovered from the solid waste management system and any money received under federal grants for local solid waste management may be used to make such payments. State loan funds for local solid waste management systems may be used only for front-end organizational activities.

(g) an agreement by the local government to establish and maintain adequate financial records for the solid waste management system, including an annual audit of the financial records and transactions covering each fiscal year by a certified public accountant. A copy of each audit must be submitted to the department of administration and the department within 30 days after its completion. Failure of a local government to file a copy of the audit as required by this section shall be grounds for rescinding the loan agreement.

(3) The department may enter into further agreements with a local government and acquire further guarantees or securities as are necessary to implement the provisions of this part.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(1), (3); amd. Sec. 10, Ch. 68, L. 1979.

75-10-122. Considerations in setting loan priorities. In allocating loan funds to local governments, the department shall establish priority based on a consideration of the plan that:

(1) most fully utilizes private enterprise for planning, design, management, construction, and operation of the facilities required to implement a solid waste management system;

(2) includes the largest population;

(3) is the most financially viable; and

(4) addresses the most pressing environmental and public health concerns.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(2).

75-10-123. Availability of state loans. Loan money as provided for under this part is available only if the local government is unable to secure adequate financing from other lending institutions or is unable to provide the adequate and necessary bonding for the implementation of a proposed solid waste management system.

History: En. 69-4020 by Sec. 10, Ch. 575, L. 1977; R.C.M. 1947, 69-4020.

75-10-124. Approval, payment, and compliance. (1) A loan agreement entered into pursuant to this part is subject to approval by the department and shall be accounted for on forms prepared by the department.

(2) The department shall establish a schedule of payments to be made by a local government under a loan agreement. Payment shall be made in an amount sufficient to pay the principal and interest cost of the loan obtained from the department.

(3) If a local government fails to comply with the payment schedule established by the department, the state may, after giving 30 days' written notice, withhold an equal share of any state taxes which are otherwise apportioned to the local government.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(4), (5), (7).

75-10-125. Solid waste management implementation grants. (1) The department, in the name of the state of Montana, may enter into an agreement with a local government for a grant of front-end implementation funds to a local government.

(2) The terms of the agreement, in addition to those prescribed by rules of the board, must include the following:

(a) the amount of the grant, not to exceed 50% of the reasonable purchase price of the capital equipment to be used by the local government in its solid waste management system;

(b) an agreement by the local government:

(i) to operate and maintain a solid waste management system in accordance with plans approved by the department, with applicable provisions of part 2 of this chapter and with rules of the department; and

(ii) not to discontinue operations or terminate a solid waste management system without the approval of the department;

(c) an agreement by the local government that if it trades or sells the capital equipment purchased with grant funds within 5 years of the date of execution of the grant agreement, the local government shall pay to the department an amount equal to the fair market value of the capital equipment on the date of the trade or sale;

(d) certification by the local government that any front-end implementation funds received pursuant to this section will be used solely for the purpose stated in the grant agreement; and

(e) an agreement by the local government to establish and maintain adequate financial records for the solid waste management system, including, within 60 days of the date of termination of the grant agreement, an audit by a certified public accountant of the financial records and transactions. A copy of this audit must be submitted to the department of administration and the department within 30 days of its completion.

(3) In granting front-end implementation funds to local governments, the department may consider only local government applications that include a solid waste management system plan that conforms to the state solid waste management plan and that specify the method by which the solid waste management system will be financed.

(4) No local government may receive a grant of front-end implementation funds under this section unless its solid waste management system plan has been approved by the department and the method of financing the approved solid waste management system has been implemented.

History: En. Sec. 4, Ch. 482, L. 1981.

Part 2

Licensing of Refuse Disposal and Transportation Montana Solid Waste Management Act

Part Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Regulation of cesspool, septic tank, and privy cleaners, Title 37, ch. 41.

75-10-201. Short title. This part may be cited as "The Montana Solid Waste Management Act".

History: En. 69-4001.1 by Sec. 2, Ch. 542, L. 1977; R.C.M. 1947, 69-4001.1.

Cross-References

Regulation of cesspool, septic tank, and privy cleaners, Title 37, ch. 41.

75-10-202. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible.

History: En. Sec. 1, Ch. 35, L. 1965; amd. Sec. 1, Ch. 542, L. 1977; R.C.M. 1947, 69-4001; amd. Sec. 1, Ch. 358, L. 1981.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Solid waste management districts, Title 7, ch. 13, part 2.

75-10-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(5) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

(6) (a) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles.

(7) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Resource recovery" means the recovery of material or energy from solid waste.

(9) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) "Resource recovery system" means a solid waste management system that provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(11) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(12) "Solid waste management system" means a system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.

(13) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

(16) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

History: En. Sec. 2, Ch. 35, L. 1965; amd. Sec. 26, Ch. 349, L. 1974; amd. Sec. 3, Ch. 542, L. 1977; R.C.M. 1947, 69-4002; amd. Sec. 2, Ch. 358, L. 1981; amd. Sec. 3, Ch. 529, L. 1981; amd. Sec. 1, Ch. 677, L. 1989; amd. Sec. 1, Ch. 407, L. 1991; amd. Sec. 2, Ch. 201, L. 1993; amd. Sec. 193, Ch. 418, L. 1995; amd. Secs. 527, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 373, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 373 inserted definition of waste tire. Amendment effective July 1, 1997.

Waste Tire Study: Section 4, Ch. 373, L. 1997, provided: "(1) The environmental quality council shall study the issues associated with managing, processing, treating, transporting, and disposing of waste tires.

(2) The environmental quality council shall report the results of the study, including any recommendations for legislation, to the legislature no later than October 1, 1998."

Applicability: Section 6, Ch. 373, L. 1997, provided: "(1) [This act] applies to a facility that initially applied for or received a solid waste management system license pursuant to Title 75, chapter 10, part 2, after July 1, 1997.

(2) [This act] does not apply to a facility that was licensed pursuant to Title 75, chapter 10, part 2, prior to July 1, 1997."

Cross-References

Securing of load — requirement, 61-8-370.

75-10-204. Powers and duties of department. The department shall, subject to the provisions of 75-10-107, adopt rules governing solid waste management systems that must include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 must submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting;

(6) fees related to the review of solid waste management system license applications;

(7) the renewal of solid waste management system licenses and related fees;

(8) a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana;

(9) requirements to maintain financial assurance payable to the state of Montana with a surety satisfactory to the department in an amount sufficient to provide for waste tire treatment, removal, transportation, disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public;

(10) any other factors relating to the sanitary disposal or management of solid wastes.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(1); amd. Sec. 3, Ch. 358, L. 1981; amd. Sec. 3, Ch. 677, L. 1989; amd. Sec. 5, Ch. 643, L. 1991; amd. Sec. 3, Ch. 273, L. 1993; amd. Sec. 14, Ch. 471, L. 1995; amd. Sec. 2, Ch. 373, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 373 inserted (9) requiring that rules address surety requirements to maintain financial assurance; and made minor changes in style. Amendment effective July 1, 1997.

Waste Tire Study: Section 4, Ch. 373, L. 1997, provided: "(1) The environmental quality council shall study the issues associated with managing, processing, treating, transporting, and disposing of waste tires.

(2) The environmental quality council shall report the results of the study, including any recommendations for legislation, to the legislature no later than October 1, 1998."

Applicability: Section 6, Ch. 373, L. 1997, provided: "(1) [This act] applies to a facility that initially applied for or received a solid waste management system license pursuant to Title 75, chapter 10, part 2, after July 1, 1997.

(2) [This act] does not apply to a facility that was licensed pursuant to Title 75, chapter 10, part 2, prior to July 1, 1997."

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-205. Inspections. The department has continuing authority and responsibility to inspect a solid waste management system under the provisions of this part. Inspections may be conducted only during reasonable hours and only after presentation of appropriate credentials identifying the inspector as a duly authorized employee of the department.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(2).

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-10-206. Variance. (1) Any person may apply to the board for a variance from rules adopted by the department pursuant to 75-10-204, except for rules adopted pursuant to 75-10-204(8). The board may grant a variance if it finds that:

(a) failure to comply with the rules does not result in a danger to public health or safety; or

(b) compliance with the rules from which a variance is sought would produce hardship without producing benefits to the health and safety of the public that outweigh the hardship.

(2) No variance may be granted pursuant to this section except after a hearing pursuant to the Montana Administrative Procedure Act and consideration by the board of the relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

(3) Nothing in this section may be construed as relieving the board from the obligation to comply with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board to grant a variance less restrictive than that act.

History: En. Sec. 1, Ch. 563, L. 1981; amd. Sec. 4, Ch. 273, L. 1993.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-207. Ground water monitoring. (1) Owners and operators of municipal solid waste landfills and other disposal sites that at any time accepted household waste, that are in operation as of October 1, 1989, and that serve a geographic area with a population of 5,000 or more persons as determined by the most recent census are required to monitor ground water as specified by the department.

(2) If the owner or operator of a municipal solid waste landfill or other disposal site specified in subsection (1) can demonstrate to the department that there is no potential for migration of constituents from the site that could cause

pollution of ground water during the active life of the site, including the closure period, and during postclosure care, the requirement for ground water monitoring specified in subsection (1) does not apply. The information provided to the department to make this demonstration must be certified by a qualified geologist, hydrogeologist, or geotechnical engineer and must include reliable site-specific data.

(3) Based on site-specific information that owners and operators of municipal solid waste landfills and other disposal sites specified in subsection (1) provide to the department, the department shall establish a priority compliance list that identifies those sites where there is the greatest risk that constituents from the sites may cause pollution of ground water, considering:

(a) proximity to current and potential drinking water supplies;

(b) site hydrologic and geologic characteristics; and

(c) age and design of the site.

(4) Owners and operators of municipal solid waste landfills and other disposal sites specified in subsection (1) shall submit proposed plans to the department for accomplishing ground water monitoring, consistent with requirements specified by department rules. The plans may be based on the information owners and operators provide to the department as specified in subsection (3). The department may approve the plans as submitted or require modifications to the plans as necessary to accomplish the purposes of this section.

(5) All sites included on the priority compliance list authorized by subsection (3) must comply with this section by January 1, 1991. All other sites subject to this section must comply by January 1, 1992.

History: En. Sec. 2, Ch. 677, L. 1989.

Cross-References

Water quality, Title 75, ch. 5.

75-10-208 reserved.

75-10-209. Moratorium on certain interstate transport of solid waste. (1) The state of Montana recognizes the importance of providing for disposal or incineration of solid waste in a manner that protects Montana's public health, safety, welfare, and environment. Although the state of Montana also recognizes that, under appropriate conditions, the transportation of out-of-state solid waste into Montana may not conflict with this goal, it is imperative that the state further develop regional and statewide solid waste management goals, plans, and regulations and revise its rules governing landfill siting and operation criteria before allowing solid waste importation beyond current levels.

(2) Except as provided in subsections (3) through (5), a person may not transport solid waste into Montana for disposal or incineration until October 1, 1993.

(3) A person who transported solid waste into Montana before May 22, 1989, may continue to transport solid waste into Montana subject to the limitation that the amount that person transports into Montana during any calendar year of the moratorium does not significantly exceed the amount that person transported into Montana during calendar year 1988.

(4) Notwithstanding the provisions of subsection (3), a person may transport into Montana solid waste generated in Idaho, North Dakota, South Dakota, or Wyoming for disposal in a solid waste management facility that receives 25,000 tons or less of solid waste annually.

(5) A person may transport solid waste to a research and development facility in Montana that receives federal or state research funds in order to test and evaluate waste treatment remediation technologies.

History: En. Sec. 7, Ch. 696, L. 1989; amd. Sec. 1, Ch. 649, L. 1991; amd. Sec. 1, Ch. 524, L. 1993.

75-10-210. Repealed. Sec. 35, Ch. 112, L. 1997.

History: En. Sec. 2, Ch. 16, Sp. L. July 1992.

75-10-211. Repealed. Sec. 30, Ch. 358, L. 1981.

History: En. Sec. 5, Ch. 35, L. 1965; amd. Sec. 2, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 6, Ch. 542, L. 1977; R.C.M. 1947, 69-4005.

75-10-212. Disposal in unauthorized area prohibited — exception. (1) No person may dispose of solid waste except as permitted under this part.

(2) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof or any officer or agent or department thereof;

(c) within 200 yards of such public highway, road, street, or alley or public property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted, provided this subsection shall not apply to the owner, his agents, or those disposing of debris or refuse with the owner's consent.

(3) Any person in violation of this section is absolutely liable, as provided in 45-2-104, and is subject to the civil penalties provided in 75-10-233.

History: (1)En. Sec. 3, Ch. 35, L. 1965; amd. Sec. 4, Ch. 542, L. 1977; Sec. 69-4003, R.C.M. 1947; (2)En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; Sec. 32-4410, R.C.M. 1947; R.C.M. 1947, 32-4410(1), 69-4003; amd. Sec. 4, Ch. 358, L. 1981; amd. Sec. 1, Ch. 461, L. 1991.

Cross-References

Littering on highways prohibited, 61-8-365.

Game wardens — duty to enforce, 87-1-504, 87-1-505.

Forfeiture of hunting or fishing license for littering, 87-2-112.

75-10-213. Unlawful disposition of dead animals — exception. It is unlawful to:

(1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field;

(2) place all or any part of a dead animal within 1 mile of the residence of any person unless the dead animal or part of a dead animal is burned or buried at least 2 feet underground; or

(3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this section.

History: En. Sec. 95, Ch. 197, L. 1967; R.C.M. 1947, 69-4518; amd. Sec. 11, Ch. 68, L. 1979.

Cross-References

Disposition of dead animal in cave unlawful, 23-2-905.

Dead or fallen animals — rendering plants, Title 81, ch. 9, part 3.

75-10-214. Exclusions — exceptions to exclusions. (1) (a) This part may not be construed to prohibit a person from disposing of his own solid waste that is generated in reasonable association with his household or agricultural operations upon land owned or leased by that person or covered by easement or permit as long as the disposal does not create a nuisance or public health hazard or violate the laws governing the disposal of hazardous or deleterious substances.

(b) This part does not apply to the operation of an electric generating facility, to the drilling, production, or refining of natural gas or petroleum, or to the operation of a mine, mill, smelter, or electrolytic reduction facility.

(2) The exclusions contained in subsection (1) of this section do not apply to a division of land of 5 acres or less made after July 1, 1977, that falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(1) thru (3), (5); amd. Sec. 12, Ch. 68, L. 1979; amd. Sec. 5, Ch. 358, L. 1981; amd. Sec. 12, Ch. 696, L. 1989; amd. Sec. 1, Ch. 565, L. 1991.

Cross-References

Private nuisance, 27-30-102.

Public nuisance, 27-30-102, 45-8-111.

75-10-215. Statewide household hazardous waste public education program. The department shall implement a statewide household hazardous waste public education program. The program must include but is not limited to providing information about:

(1) alternatives to disposal of household hazardous waste at municipal solid waste landfills and other disposal sites;

(2) methods of reusing or recycling household hazardous waste; and

(3) alternatives to the use of products that lead to the generation of household hazardous waste.

History: En. Sec. 2, Ch. 407, L. 1991.

Cross-References

Household hazardous waste defined, 75-10-203.

75-10-216. Waste tire disposal sites — financial assurance required. (1) A solid waste management system licensed pursuant to 75-10-221 for the sole or primary purpose of storage, treatment, processing, or disposal of waste tires is required to provide and maintain financial assurance in accordance with rules of the department.

(2) Financial assurance required by this section must be sufficient to cover the cost of proper management of the waste tires stored at the facility, including but not limited to waste tire treatment, removal, transportation, disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public. The licensee may elect to provide financial assurance by any one method or a combination of methods satisfactory to the department, including but not limited to insurance, a guarantee, performance, or other surety bond, a letter of credit, qualification as a self-insurer, or other demonstration of financial capability.

(3) The department may require the owner or operator of the facility to modify the terms and conditions of financial assurance provided for the purposes of this section to adjust for changing circumstances at the facility, including but not limited to the number of waste tires accumulated without processing or disposal, availability of alternative waste tire markets, the financial viability of the facility operation, and the estimated costs of waste tire treatment, processing, transportation, and disposal alternatives.

History: **En. Sec. 3, Ch. 373, L. 1997.**

Compiler's Comments

Waste Tire Study: Section 4, Ch. 373, L. 1997, provided: "(1) The environmental quality council shall study the issues associated with managing, processing, treating, transporting, and disposing of waste tires.

(2) The environmental quality council shall report the results of the study, including any recommendations for legislation, to the legislature no later than October 1, 1998."

Applicability: Section 6, Ch. 373, L. 1997, provided: "(1) [This act] applies to a facility that initially applied for or received a solid waste management system license pursuant to Title 75, chapter 10, part 2, after July 1, 1997.

(2) [This act] does not apply to a facility that was licensed pursuant to Title 75, chapter 10, part 2, prior to July 1, 1997."

Effective Date: Section 7, Ch. 373, L. 1997, provided: "[This act] is effective July 1, 1997."

75-10-217 reserved.

75-10-218. Repealed. Sec. 6, Ch. 145, L. 1993.

History: **En. Sec. 6, Ch. 696, L. 1989.**

75-10-219 and 75-10-220 reserved.

75-10-221. License required — application. (1) Except as provided in 75-10-214, no person may dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require.

(4) The license provided for in this section is for a period not to exceed 12 months unless renewed by the department. The department may provide exceptions to the 12-month requirement for a 2-year period following July 1, 1991.

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In establishing fees for licenses and the review of applications, the department shall consider the volume of waste to be managed and the size of the proposed solid waste management system. The fees must encourage reduction in the volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system.

History: **En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(1); amd. Sec. 6, Ch. 358, L. 1981; amd. Sec. 6, Ch. 643, L. 1991.**

75-10-222. Notification of and validation by local health officer. (1) When the department receives an application for a license pursuant to the provisions of this part, the local health officer in the county where the solid waste management system will be located shall be notified in writing of the application within 15 days after the department has received the application.

(2) If the department decides to issue a license pursuant to the provisions of this part, the department shall notify the local health officer in writing.

(3) A license issued by the department under this section shall not be valid until signed by the local health officer having jurisdiction in the county in which the solid waste management system will be operated.

(4) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this part, make a final decision on whether the license will be validated.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part).

75-10-223. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this part upon a finding that the requirements of this part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the license, he shall notify the applicant, the department, and any other interested person in writing.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the board shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part).

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-224. Revocation or denial of license by department. The department may deny or revoke a license to operate a solid waste management system after giving the applicant and the local health officer written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a solid waste management system cannot be operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation shall be held pursuant to the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 35, L. 1965; amd. Sec. 7, Ch. 542, L. 1977; R.C.M. 1947, 69-4006.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-225. Repealed. Sec. 30, Ch. 358, L. 1981.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(4).

75-10-226 reserved.

75-10-227. Administrative enforcement. (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or his agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under part 1 or this part.

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: En. Sec. 8, Ch. 696, L. 1989.

75-10-228. Civil penalties. (1) A person who violates any provision of this part, a rule adopted under this part, or a license provision is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Fines and penalties collected for violations of this part must be deposited in the solid waste management account provided for in 75-10-117.

History: En. Sec. 9, Ch. 696, L. 1989; (3)En. Sec. 2, Ch. 565, L. 1991.

75-10-229 and 75-10-230 reserved.

75-10-231. Actions. The department may, through the attorney general or appropriate county attorney, initiate and maintain in district court enforcement actions as provided in this part, including actions to collect a criminal penalty or to enjoin the operation of a solid waste management system that is in violation of this part or a rule adopted by the department or order issued as provided in this part.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(3).

Cross-References

Injunctions — Supreme Court original jurisdiction, 3-2-205.

Injunctions, Title 27, ch. 19.

75-10-232. Penalty for violations. (1) A person violating this part or regulations prescribed by the department under this part, except 75-10-212(2), is guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500.

(2) Each day upon which a violation occurs is a separate violation.

History: Ap. p. Sec. 9, Ch. 35, L. 1965; amd. Sec. 5, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 10, Ch. 542, L. 1977; Sec. 69-4009, R.C.M. 1947; Ap. p. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4009, 69-4519(3), (4); amd. Sec. 13, Ch. 68, L. 1979; amd. Sec. 7, Ch. 358, L. 1981.

Cross-References

Execution of criminal fine, 46-19-102.

75-10-233. Dumping penalty — enforcement. (1) A person found guilty of a violation of 75-10-212 shall be fined in the sum not exceeding $100 or imprisoned in the county jail for a period not exceeding 30 days or be punished by both fine and imprisonment, in the discretion of the court.

(2) A person found absolutely liable under 75-10-212 is subject to a civil penalty not to exceed $5,000.

(3) The provisions of 75-10-212 shall be enforced by all highway patrol officers, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens have the right to enforce the provisions of 75-10-212 on public property and on private property where public recreation is permitted.

History: En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; R.C.M. 1947, 32-4410(2), (3); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 2, Ch. 461, L. 1991.

Cross-References

Local government law enforcement, Title 7, ch. 32.

Highway patrol, Title 44, ch. 1.

Game wardens, Title 87, ch. 1, part 5.

Part 3

Detachable Beverage Container Openers

75-10-301. Definitions. As used in 75-10-302, the following definitions apply:

(1) "Beverage" means beer or other malt beverage, mineral water, soda water, tea, or carbonated soft drink in liquid form and intended for human consumption.

(2) "Container" means an individual, separate, sealed metal can containing a beverage.

History: En. Sec. 1, Ch. 185, L. 1981.

75-10-302. Detachable opening prohibited. No person may sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable when opening the container.

History: En. Sec. 2, Ch. 185, L. 1981.

75-10-303. Violations — penalty. A violation of 75-10-302 is a misdemeanor and is punishable as provided in 46-18-212. Each day on which a violation occurs is a separate offense.

History: En. Sec. 3, Ch. 185, L. 1981.

Part 4
Hazardous Waste Management

Part Cross-References

Hazardous waste/CERCLA special revenue account — bonds, 75-10-621 through 75-10-623.

Licensing of underground storage tank installers, Title 75, ch. 11, part 2.

Petroleum storage tank cleanup, Title 75, ch. 11, part 3.

75-10-401. Short title. This part shall be known and may be cited as the "Montana Hazardous Waste Act".

History: En. Sec. 8, Ch. 358, L. 1981; amd. Sec. 1, Ch. 384, L. 1989; amd. Sec. 17, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 after "Waste" deleted "and Underground Storage Tank".

75-10-402. Findings and purpose. (1) The legislature finds that the safe and proper management of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes and used oil; to establish a program of regulation over used oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ensure the safe and adequate management of hazardous wastes and used oil within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended.

History: En. Sec. 9, Ch. 358, L. 1981; amd. Sec. 2, Ch. 384, L. 1989; amd. Sec. 1, Ch. 386, L. 1989; amd. Sec. 1, Ch. 28, L. 1995; amd. Sec. 18, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 deleted (3) that read: "(3) The legislature also finds that petroleum products and hazardous substances stored in underground tanks are a separate category of substances that are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in 75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of underground storage tank requirements established under this part"; and made minor changes in style.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-10-403. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of the hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(5) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(6) "Generation" means the act or process of producing waste material.

(7) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(8) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(9) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(10) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(11) "Manifest" means the shipping document that is originated and signed by the generator and that is used to identify the hazardous waste and its quantity, origin, and destination during its transportation.

(12) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(13) "Storage" means the actual or intended containment of hazardous wastes, either on a temporary basis or for a period of years.

(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(17) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities.

History: En. Sec. 10, Ch. 358, L. 1981; amd. Sec. 1, Ch. 633, L. 1985; amd. Sec. 1, Ch. 562, L. 1987; amd. Sec. 3, Ch. 384, L. 1989; amd. Sec. 2, Ch. 28, L. 1995; amd. Sec. 1, Ch. 218, L. 1995; amd. Sec. 194, Ch. 418, L. 1995; amd. Secs. 528, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 568, L. 1995; amd. Sec. 19, Ch. 112, L. 1997; amd. Sec. 1, Ch. 156, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 112 in definition of dispose, in three places before "hazardous waste", deleted "regulated substance"; deleted definition of regulated substance that read: ""Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part"; in definition of storage, before "hazardous wastes", deleted "regulated substances" and after "hazardous wastes" deleted "or both"; deleted definition of underground storage tank that read: ""Underground storage tank":

(a) means, except as provided in subsections (18)(b)(i) through (18)(b)(xi):

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely aboveground, partially aboveground, or entirely underground;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (18)(b)(v)(A) or (18)(b)(v)(B), if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(xi) any pipe connected to a tank described in subsections (18)(b)(i) through (18)(b)(ix)"; and made minor changes in style.

Chapter 156 in definition of underground storage tank inserted (b)(xii) excluding certain underground pipes. Amendment effective March 26, 1997.

Coordination Instruction: Section 2, Ch. 156, L. 1997, a coordination section, provided that if House Bill No. 152 deletes the definition of "underground storage tank" from 75-10-403 and recodifies it in a different place, then the amendment made to the definition of "underground storage tank" in 75-10-403 is made to the definition in that recodified section. House Bill No. 152 was approved as Ch. 112, L. 1997. In accordance with the coordination instruction, the amendment to this section is made to sec. 3, Ch. 112, L. 1997.

75-10-404. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of environmental quality related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act. The integration and coordination must be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section.

History: En. Sec. 11, Ch. 358, L. 1981; amd. Sec. 2, Ch. 386, L. 1989; amd. Sec. 195, Ch. 418, L. 1995; amd. Sec. 20, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 at end of (1)(e) deleted "or regulated substance".

Cross-References

Montana Major Facility Siting Act, Title 75, ch. 20.

75-10-405. Administrative rules. (1) The department may, subject to the provisions of 75-10-107, adopt, amend, or repeal rules governing hazardous waste and used oil, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel, for financial assurance of facility owners and operators, and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) establishing a schedule of fees and procedures for the collection of fees for:

(i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

(ii) hazardous waste management as provided in 75-10-433;

(iii) the reissuance and modification of hazardous waste management facility permits; and

(iv) the registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes;

(l) procedures for the assessment of administrative penalties as authorized by 75-10-424;

(m) identification and classification of used oil that is subject to regulation and used oil that is not subject to regulation;

(n) requirements for the proper management of used oil; and

(o) other rules that are necessary to obtain and maintain authorization under the federal program.

(2) Notwithstanding the provisions of 75-10-107, the department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require hazardous waste generators and hazardous waste management facilities to report on an annual rather than on a biennial basis;

(c) may adopt regulatory requirements for hazardous waste transfer facilities;

(d) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(e) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations.

History: **En. Sec. 12, Ch. 358, L. 1981; amd. Sec. 1, Ch. 255, L. 1983; amd. Sec. 1, Ch. 107, L. 1985; amd. Sec. 1, Ch. 109, L. 1985; amd. Sec. 2, Ch. 633, L. 1985; amd. Sec. 1, Ch. 336, L. 1987; amd. Sec. 2, Ch. 340, L. 1987; amd. Sec. 2, Ch. 562, L. 1987; amd. Sec. 4, Ch. 384, L. 1989; amd. Sec. 1, Ch. 400, L. 1991; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 1, Ch. 281, L. 1993; amd. Sec. 1, Ch. 341, L. 1993; amd. Sec. 1, Ch. 509, L. 1993; amd. Sec. 3, Ch. 28, L. 1995; amd. Sec. 15, Ch. 471, L. 1995; amd. Sec. 21, Ch. 112, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 112 deleted former (2) that read: "may adopt requirements for the prevention and correction of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and corrective action;

(iv) standards for design, construction, installation, and closure;

(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program;

(vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-10-423; and

(vii) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks"; and made minor changes in style.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-406. Permits. (1) A person may not construct or operate a hazardous waste management facility without first obtaining a permit from the department for the facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and is subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to the facility and in compliance with the provisions of this part and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department or who has a permit revoked or modified shall be afforded an opportunity for a hearing before the board upon written application made within 30 days after service of notice of denial, revocation, or modification by mail. Service by mail is complete upon mailing.

(5) Notwithstanding any other provisions of this part, the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. Emergency permits

may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.

(6) The department may, as it considers appropriate, grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.

(7) In permits issued under this section, the department shall require corrective action for all releases of hazardous waste or constituents at a treatment, storage, or disposal facility, including corrective action for releases that extend beyond the facility boundaries if necessary to protect public health or the environment. A permit must contain a schedule of compliance for corrective action and requirements for assurance of financial responsibility for completion of the corrective action.

(8) Each permit issued by the department to a person owning or operating a facility must contain the terms and conditions the department considers necessary to protect human health and the environment.

History: En. Sec. 13, Ch. 358, L. 1981; amd. Sec. 2, Ch. 336, L. 1987; amd. Sec. 3, Ch. 386, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

75-10-407. Concurrent permit and major facility siting decisions. If it is determined that an application for a certificate under the Montana Major Facility Siting Act, Title 75, chapter 20, will result in the generation, transportation, storage, or disposal of hazardous wastes as defined in 75-10-403, the department shall conduct its review under the provisions of this part concurrently with the studies of air and water quality conducted under the provisions of the Montana Major Facility Siting Act. A decision to grant or deny a permit for the treatment, storage, or disposal of hazardous wastes under the provisions of 75-10-406 is appealable concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the Montana Major Facility Siting Act. If the initial permit has been granted as specified in this section, all renewals or modifications of a permit or enforcement actions concerning alleged violations of the permit and the provisions of this part shall be conducted pursuant to the procedures and enforcement provisions established in this part.

History: En. Sec. 14, Ch. 358, L. 1981.

75-10-408. Variances — renewals. (1) A person who is a generator or transporter of hazardous wastes or who owns or operates a hazardous waste management facility may apply to the board for a variance or partial variance from the application of or compliance with any requirement of this part or any rule adopted under this part. The board may grant a variance or partial variance if it finds that:

(a) the applicant's actions or proposed actions regarding generation, transportation, treatment, storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause substantially adverse environmental effects; and

(b) the application of or compliance with the requirement or rule would produce unreasonable hardship without equal or greater benefits to the public.

(2) No variance or partial variance may be granted except after public hearing on due notice and until the board has considered the relative interests of the applicant, other persons specifically affected, and the general public.

(3) No variance or partial variance may be granted for a period to exceed 1 year, but the variance or partial variance may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application for renewal shall be made in the manner and upon such notice as specified in rules promulgated under this part. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by a variance, partial variance, or renewal granted by the board may obtain judicial review thereof as provided by the judicial review of contested case provisions of the Montana Administrative Procedure Act.

(5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-10-415.

(6) Under no conditions may a variance be granted by the board that would result in a less stringent requirement or degree of control than would be imposed by the applicable federal regulations adopted under the federal Resource Conservation and Recovery Act.

History: En. Sec. 15, Ch. 358, L. 1981.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-409. Compliance monitoring and reporting. (1) The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part, any order of the board or department, and permit conditions.

(2) The department may require the owner or operator of a facility to submit reports on the compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board.

History: En. Sec. 16, Ch. 358, L. 1981; amd. Sec. 3, Ch. 633, L. 1985; amd. Sec. 22, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 deleted (3) that read: "(3) If an owner or operator of an underground storage tank discovers or is provided with evidence that the tank may have leaked, he must immediately notify the department that a leak may exist"; and made minor changes in style.

75-10-410. Inspections — sampling. (1) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

(i) hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation;

(ii) used oil is or has been generated, stored, treated, disposed of, or loaded for transportation; or

(iii) records pertinent to the used oil or hazardous waste activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the used oil or hazardous wastes for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any substances, used oil, or wastes, including samples from any soil or ground water or from any vehicle in which used oil or wastes are transported, or samples of any containers or labeling for the substances, used oil, or wastes. If the employee or agent of the department takes a sample of any used oil, hazardous waste, or suspected hazardous waste, the employee or agent shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.

History: En. Sec. 17, Ch. 358, L. 1981; amd. Sec. 5, Ch. 384, L. 1989; amd. Sec. 4, Ch. 28, L. 1995; amd. Sec. 23, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 deleted former (1)(a)(i) that read: "regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part"; in (1)(a)(iii) and (1)(b), before "used oil", deleted "regulated substances"; and made minor changes in style.

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-10-411. Hazardous waste site inventory. (1) The department is authorized to conduct an inventory of sites and locations in the state where hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a hazardous waste or the release of the waste or any waste constituent may present a substantial hazard to the public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) In the case of any facility or site not in operation at the time that a determination is made under subsection (2) with respect to the facility or site, if the department finds that the owner of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, it may issue an order requiring the most recent previous owner or operator of the facility or site who could

reasonably be expected to have actual knowledge to carry out the actions referred to in subsection (2).

(4) An order issued under subsection (2) or (3) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(5) If the department determines that the owner or operator referred to in subsection (2) or (3) is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct the activities.

(6) For the purposes of carrying out this section, the department may exercise the powers set forth in 75-10-410.

History: En. Sec. 18, Ch. 358, L. 1981; amd. Sec. 6, Ch. 384, L. 1989; amd. Sec. 4, Ch. 386, L. 1989; amd. Sec. 24, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 in (1), after "state where", deleted "regulated substances"; in (2), near beginning after "presence of a" and after "release of the", deleted "regulated substance or"; and made minor changes in style.

75-10-412. State hazardous waste management facilities. (1) The department may:

(a) if it considers such action to be necessary, establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes;

(b) acquire interests in real property by gift, purchase, lease, or other means in order to develop any such facility;

(c) operate and maintain such a facility directly or through agreement with public or private persons; and

(d) collect reasonable fees to defray a portion of the costs of establishing, maintaining, and operating the facility.

(2) A state facility must meet all applicable requirements for a hazardous waste management facility under this part.

History: En. Sec. 19, Ch. 358, L. 1981; amd. Sec. 2, Ch. 107, L. 1985.

75-10-413. Administrative enforcement. (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment; or

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: En. Sec. 20, Ch. 358, L. 1981; amd. Sec. 5, Ch. 386, L. 1989; amd. Sec. 2, Ch. 281, L. 1993; amd. Sec. 25, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 in (2), at end of first sentence, deleted "previously issued"; deleted (3)(c) that read: "(c) for underground storage tank violations, assess administrative penalties and issue corrective action orders under 75-10-423"; and made minor changes in style.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

75-10-414. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

(2) enjoin a violation of this part, a rule adopted under this part, an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit; or

(3) require compliance with this part, a rule adopted under this part, an order of the department or the board, or a permit provision.

History: En. Sec. 21, Ch. 358, L. 1981; amd. Sec. 1, Ch. 108, L. 1985.

Cross-References

Injunctions — Supreme Court jurisdiction, 3-2-205.

Injunctions, Title 27, ch. 19.

75-10-415. Imminent hazard. Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any used oil or hazardous waste may present an imminent and substantial danger to the public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person (including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who has contributed to or who is contributing to the handling, storage, treatment, transportation, or disposal from engaging in these activities or order the person to take other action as may be necessary, or both. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect the public health and the environment.

History: **En. Sec. 22, Ch. 358, L. 1981; amd. Sec. 7, Ch. 384, L. 1989; amd. Sec. 6, Ch. 386, L. 1989; amd. Sec. 5, Ch. 28, L. 1995; amd. Sec. 26, Ch. 112, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 112 near beginning of first sentence, after "disposal of any", deleted "regulated substance"; and made minor changes in style.

75-10-416. Cleanup orders. The department may issue a cleanup order to any person who has discharged, deposited, or spilled any used oil or hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of used oil or hazardous waste. The order must direct the person to clean up and remove the used oil or hazardous waste, to treat the used oil or hazardous waste so as to render it nonhazardous, or to take other actions as may be considered reasonable by the department.

History: **En. Sec. 23, Ch. 358, L. 1981; amd. Sec. 8, Ch. 384, L. 1989; amd. Sec. 6, Ch. 28, L. 1995; amd. Sec. 27, Ch. 112, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 112 in four places, before "used oil", deleted "regulated substance"; and made minor changes in style.

75-10-417. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed $10,000 per violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section shall be deposited in the state general fund.

History: **En. Sec. 24, Ch. 358, L. 1981; amd. Sec. 1, Ch. 150, L. 1985; amd. Sec. 7, Ch. 386, L. 1989.**

Cross-References

Injunctions, Title 27, ch. 19.

75-10-418. Criminal penalties. (1) A person is guilty of an offense under this section if the person knowingly:

(a) transports any hazardous waste to an unpermitted facility;

(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this part without a permit or contrary to a material permit condition;

(c) omits material information or makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

(d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.

(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than $25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutes a separate violation.

(3) A person who knowingly violates any requirement of this part or any rule or material permit condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to $5,000 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(4) Upon a second conviction for a violation of this section, the maximum penalties specified in this section must be doubled.

(5) Action under this section does not bar enforcement of this part, rules made under this part, orders of the department or the board, or permits by injunction or other appropriate remedy.

(6) Money collected under this section, except money collected in a justice's court, must be deposited in the state general fund.

History: En. Sec. 25, Ch. 358, L. 1981; amd. Sec. 45, Ch. 557, L. 1987; amd. Sec. 8, Ch. 386, L. 1989; amd. Sec. 7, Ch. 28, L. 1995.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Injunctions, Title 27, ch. 19.

Execution of criminal fine, 46-19-102.

75-10-419. Department designated agency for federal program participation — interstate cooperation. (1) The department is designated as the official agency for the state for all purposes of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended, and for the purpose of such other state or federal legislation as has or may be enacted after October 1, 1981, to assist in the management of hazardous wastes.

(2) The legislature of this state encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, encourages the adoption of uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes. The

department may enter into agreements with the responsible authorities of the United States and of other states, subject to approval by the governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of this part and may carry out the agreements.

History: **En. Sec. 26, Ch. 358, L. 1981.**

75-10-420. Venue for legal actions. All legal actions affecting hazardous waste management facilities in the state must be brought in the county in which the facility is located.

History: **En. Sec. 27, Ch. 358, L. 1981; amd. Sec. 9, Ch. 384, L. 1989; amd. Sec. 28, Ch. 112, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 112 deleted second sentence that read: "All legal actions affecting underground storage tanks or the disposal of regulated substances must be brought in the county where the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial district, Lewis and Clark County."

75-10-421. Construction in event of conflict — remedies cumulative. (1) The provisions of this part and rules promulgated pursuant to this part govern if they conflict with other provisions of Montana law or any action taken by the department under such provisions.

(2) The remedies provided for in this part are cumulative with other remedies provided by law.

History: **En. Sec. 28, Ch. 358, L. 1981.**

75-10-422. Unlawful disposal. It is unlawful to dispose of used oil or hazardous waste, as defined in this part or by rule, without a permit or, if a permit is not required under this part or rules adopted under this part, by any other means not authorized by law.

History: **En. Sec. 9, Ch. 386, L. 1989; amd. Sec. 8, Ch. 28, L. 1995.**

75-10-423. Renumbered 75-11-525. Sec. 36(2), Ch. 112, L. 1997.

75-10-424. Administrative penalty. (1) The department may assess a person who violates a provision of this part, or a rule adopted under this part, an administrative penalty, not to exceed $10,000 for each violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed $100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriate amount of an administrative penalty, the department shall consider:

(a) the gravity and the number of violations;

(b) the degree of care exercised by the alleged violator;

(c) whether significant harm resulted to the public health or the environment; and

(d) the degree of potential significant harm to the public health or the environment.

(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative penalty as determined by the department, the department may seek to recover the amount in an appropriate district court.

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund.

History: En. Sec. 2, Ch. 509, L. 1993; amd. Sec. 9, Ch. 28, L. 1995; amd. Sec. 31, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 in (1), in first sentence before "provision" and before "rule", deleted "used oil or hazardous waste"; and made minor changes in style.

75-10-425 reserved.

75-10-426. Disclosure statement required. (1) Subject to the provisions of subsection (4), a permit that is required for a hazardous waste management facility under 75-10-406 may not be issued, reissued, renewed, or modified without the filing of a disclosure statement as required under this section. Before an application for the issuance, reissuance, renewal, or modification of a permit under 75-10-406 for a hazardous waste management facility may be approved, the applicant shall submit to the department a disclosure statement containing the following information:

(a) the name, business address, and social security number of the applicant;

(b) a description of any civil complaint filed and administrative enforcement action taken within 5 years before the date of the application against the applicant for the violation of an environmental protection law and a statement regarding whether the complaint or action resulted in a civil or administrative penalty;

(c) a description of all judgments of criminal conviction entered against the applicant for the violation of an environmental protection law within 5 years before the date of the application; and

(d) a description of all judgments of criminal conviction for activities directly associated with a hazardous waste management facility entered against the applicant for the violation of an environmental protection law of another state within 5 years before the date of the application. For the purposes of this subsection (d), "environmental protection law of another state" means a law or administrative rule adopted pursuant to a law:

(i) regulating solid or hazardous waste or underground storage tanks; or

(ii) protecting the air or water resource.

(2) A disclosure statement, as required in subsection (1), must be executed under oath or affirmation and is subject to the penalty for perjury. The department may verify and investigate the information contained in a disclosure statement required under this section.

(3) A person required to file a disclosure statement under this section shall provide assistance or information requested by the department that is related to the statement and shall cooperate in an inquiry or investigation conducted by the department under subsection (2).

(4) (a) This section does not apply to the issuance of a temporary emergency permit under 75-10-406(5) or to the modification of a permit that does not reflect a change in the owner or operator of the hazardous waste management facility.

(b) A person is not required to comply with the provisions of 75-10-427 or this section for:

(i) the reissuance, renewal, or modification of a valid hazardous waste management facility permit issued prior to January 1, 1995; or

(ii) an application for a new hazardous waste management facility permit for a facility when a permit was issued prior to January 1, 1995, if the new permit is not because of a change in the owner or operator at that facility.

(5) For the purposes of this section, "applicant" includes a subsidiary or successor in interest with respect to the applicant.

History: En. Sec. 2, Ch. 218, L. 1995.

75-10-427. Denial or modification of permit — mitigating factors. (1) The department may deny an application for the issuance, reissuance, renewal, or modification of a permit for a hazardous waste management facility or impose additional conditions on a permit pursuant to subsection (2) if within 5 years before the date of the application:

(a) a civil complaint or administrative enforcement action for a violation of an environmental protection law has resulted in the assessment of a penalty against the applicant;

(b) a judgment of criminal conviction of an environmental protection law has been entered against the applicant;

(c) the applicant has a history of repeated violations of environmental protection laws; or

(d) a judgment or criminal conviction for a violation described in 75-10-426(1)(d) has been entered against the applicant.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the number, nature, and gravity of the violations of environmental protection laws or violations described in 75-10-426(1)(d);

(b) the degree of culpability of the applicant;

(c) the applicant's cooperation with the state or federal agencies involved in the complaints, enforcement actions, and convictions referred to in 75-10-426; and

(d) the applicant's dissociation from other persons or entities involved in the complaints or enforcement actions or convicted of acts referred to in 75-10-426.

(4) For the purposes of this section, "applicant" includes a subsidiary or successor in interest with respect to the applicant.

History: En. Sec. 3, Ch. 218, L. 1995.

75-10-428 through 75-10-430 reserved.

75-10-431. Definitions. As used in 75-10-432, the following definitions apply:

(1) "Class I facility" means a hazardous waste management facility that:

(a) contains one or more regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(b) primarily receives hazardous waste generated by offsite sources not owned, controlled, or operated by the facility owner or operator.

(2) "Class II facility" means a hazardous waste management facility that is neither a class I facility nor a class III facility.

(3) "Class III facility" means a hazardous waste management facility that:

(a) does not contain a regulated landfill unit, surface impoundment, land treatment unit, incinerator, boiler, or industrial furnace; and

(b) primarily receives hazardous waste generated either onsite or by offsite sources that are owned, controlled, or operated by the facility owner or operator.

History: En. Sec. 2, Ch. 341, L. 1993.

75-10-432. Hazardous waste management facility filing and review fees. (1) The department may establish and collect fees for the filing and review of hazardous waste management facility permits. The fees must be based upon the following schedule:

(a) for class I facilities, a maximum fee of $150,000, payable as follows:

(i) a nonrefundable payment of $50,000 due when an applicant files for a permit;

(ii) a payment of $50,000 due when the department notifies the applicant that the application is complete; and

(iii) an additional payment of up to $50,000 for the portion of the department's actual costs of review that exceed $100,000. This payment is due 30 days after the department's final decision on the application.

(b) for class II facilities, a maximum fee of $90,000, payable as follows:

(i) a nonrefundable payment of $40,000 due when an applicant files for a permit; and

(ii) an additional payment of up to $50,000 for the portion of the department's actual costs of review that exceed $40,000. This payment is due 30 days after the department's final decision on the application.

(c) for class III facilities, a maximum fee of $25,000, payable as follows:

(i) a nonrefundable payment of $10,000 due when an applicant files for a permit; and

(ii) an additional payment of up to $15,000 for the portion of the department's actual costs of review that exceed $10,000. This payment is due 30 days after the department's final decision on the application.

(2) If, after receipt of the payment required in subsection (1)(a)(ii), the applicant notifies the department in writing of its intent to withdraw the application, the department shall return to the applicant any portion of the payment received pursuant to subsection (1)(a)(ii) in excess of the department's actual costs of permit review.

(3) The department shall deposit all fees collected pursuant to this section into an account in the state special revenue fund as provided in 75-10-434.

History: En. Sec. 3, Ch. 341, L. 1993.

75-10-433. Hazardous waste management fees. (1) An owner or operator of a hazardous waste management facility that primarily receives waste generated by offsite sources that are not owned, controlled, or operated by the facility owner or operator or site owner shall collect from generators and remit quarterly to the department a fee of:

(a) $8 per ton on all hazardous waste received at the facility or site for management in regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(b) $4 per ton on all hazardous waste received at the facility or site for management in any regulated unit or units other than those units described in subsection (1)(a).

(2) The fees established in subsection (1) may be prorated for amounts of hazardous waste received that are less than 1 ton in weight.

(3) The department shall remit 15% of the fees received under this section from a facility to the county in which the facility is located. The county may use the money for the purpose of implementing hazardous material or hazardous waste monitoring and response programs.

(4) The department shall deposit all fees collected under this section, except fees paid to a county, into an account in the state special revenue fund as provided in 75-10-434.

History: En. Sec. 4, Ch. 341, L. 1993.

75-10-434. Deposit of hazardous waste management fees. (1) There must be credited to an account within the state special revenue fund established in 17-2-102:

(a) all fees collected under 75-10-432;

(b) all fees collected under 75-10-433, except fees paid to a county;

(c) all fees collected for the registration of hazardous waste generators; and

(d) all fees collected for the reissuance or modification of hazardous waste management facility permits.

(2) Money in the account may be used by the department only for the administration of the hazardous waste provisions of this part.

History: En. Sec. 5, Ch. 341, L. 1993; amd. Sec. 1, Ch. 84, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 84 inserted (1)(c) concerning fees collected for the registration of hazardous waste generators; inserted (1)(d) concerning fees collected for the reissuance or modification of hazardous waste management facility permits; and made minor changes in style. Amendment effective July 1, 1997.

75-10-435 through 75-10-440 reserved.

75-10-441. Hazardous waste site — public hearing required before operation. (1) The owner or manager of a proposed commercial facility for the storage, collection, or transfer of hazardous waste (whether or not the proposed facility is subject to permitting under 75-10-406) shall conduct a public hearing in the nearest population center to provide information and answer questions on:

(a) facility plans and operating procedures;

(b) emergency response plans and the manner in which neighboring population densities have been considered in the facility siting decision;

(c) the kinds of substances to be handled and any applicable state and federal requirements for the provision of public information on these substances;

(d) procedures that will be used to inform the public of any changes in the kinds of substances to be handled; and

(e) any other matters related to the operation of the facility that are pertinent to protecting public health, safety, and the environment.

(2) The hearing must be conducted no later than 60 days prior to the commencement of commercial hazardous waste storage, collection, or transfer operations at the facility.

(3) The hearing must be preceded by written notice:

(a) posted in no fewer than 25 locations of high public visibility and geographically distributed in neighborhoods within one-half mile of the facility;

(b) published in a newspaper of general circulation once a week for the 3 weeks immediately preceding the hearing; and

(c) delivered to the department not less than 30 days prior to the hearing.

History: En. Sec. 1, Ch. 340, L. 1987.

75-10-442. Moratorium on certain hazardous waste facility permits. (1) Until October 1, 1993, the department may not issue a permit under 75-10-406 for a boiler or industrial furnace that burns hazardous waste or hazardous waste-derived fuel.

(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely manner in adopting rules implementing 75-10-406 and in processing applications required under 75-10-406.

History: En. Sec. 3, Ch. 16, Sp. L. July 1992.

75-10-443 through 75-10-446 reserved.

75-10-447. Renumbered 75-11-526. Sec. 36(2), Ch. 112, L. 1997.

75-10-448 through 75-10-450 reserved.

75-10-451. Halogenated solvents — sale restricted — proof of registration required — procedure. (1) It is unlawful for any person to distribute, sell, or offer for sale within the state quantities of 20 gallons or more of halogenated solvent annually to a single purchaser for commercial or government use unless the purchaser possesses proof of registration with the department.

(2) It is unlawful for any person to annually use 20 gallons or more of a halogenated solvent for commercial purposes without registering with the department.

(3) Under this section, halogenated solvents include but are not limited to solvents containing tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, and other hazardous wastes referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 and F002, as amended.

(4) To register with the department, a person or government unit shall file a statement indicating the following:

(a) the person's or government unit's name and business address;

(b) the estimated volume of halogenated solvent used annually for commercial or government purposes; and

(c) the method of waste disposal in accordance with requirements specified by department rules, including:

(i) treatment or disposal in an onsite facility;

(ii) delivery to an appropriate offsite storage, treatment, or disposal facility;

(iii) beneficial use or reuse; or

(iv) legitimate recycling or reclamation.

(5) Pursuant to the requirements of subsection (4), the department shall:

(a) notify affected persons and government units of the requirements;

(b) prepare and distribute forms for the statement;

(c) prepare and distribute information to assist persons and government units in selecting appropriate methods to use, dispose of, or reuse waste halogenated solvents; and

(d) register any person or government unit who files a completed statement.

(6) This section does not authorize the department to impose new or additional requirements for waste disposal on commercial or government users of halogenated solvents.

History: En. Sec. 1, Ch. 117, L. 1989.

Part 5

Motor Vehicle Recycling and Disposal

Part Cross-References

Beauty of state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

Junked motor vehicles as reinforcement prohibited — penalty, 75-7-106.

75-10-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, that is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(5) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(6) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(9) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view.

History: **En. Sec. 1, Ch. 410, L. 1973; amd. Sec. 1, Ch. 251, L. 1977; amd. Sec. 1, Ch. 252, L. 1977; R.C.M. 1947, 69-6801; amd. Sec. 1, Ch. 28, L. 1983; amd. Sec. 1, Ch. 572, L. 1991; amd. Sec. 196, Ch. 418, L. 1995; amd. Secs. 529, 568, Ch. 546, L. 1995.**

75-10-502. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility. Possession at a single location of four or more junk vehicles of a type required to be licensed is prima facie evidence that the possessor is operating a motor vehicle wrecking facility.

History: **En. Sec. 3, Ch. 410, L. 1973; amd. Sec. 3, Ch. 252, L. 1977; R.C.M. 1947, 69-6803.**

75-10-503. Adoption of rules. (1) The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(a) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(b) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(c) the inspection and evaluation of premises and records subject to or required by this part;

(d) the development of budget and fiscal forms and procedures for counties;

(e) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(f) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule that requires any motor vehicle wrecking facility that existed prior to July 1, 1973, and has been continuously used thereafter as a motor vehicle wrecking facility to construct a fence or manmade barrier that would be in excess of 12 feet in height.

(2) The department shall adopt rules authorizing the sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities.

History: **(1)En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part); amd. Sec. 2, Ch. 28, L. 1983; (2)En. Sec. 1, Ch. 698, L. 1989; amd. Sec. 2, Ch. 572, L. 1991; amd. Sec. 197, Ch. 418, L. 1995.**

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-504. Shielding — new facility. A motor vehicle wrecking facility or graveyard site established or proposed on or after July 1, 1973, may not be approved for use or licensed if the proposed facility cannot be shielded from public view on the date it is initially established or proposed to the department for licensure. The prohibition concerning approval of a new motor vehicle wrecking facility or graveyard site does not apply to a facility site that was licensed as such at any time within the 18 months immediately preceding the date an application is made for licensure of such site.

History: En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part); amd. Sec. 3, Ch. 28, L. 1983.

Cross-References

Rules governing shielding by Department of Transportation, 75-15-222.

75-10-505. Shielding and removal of junk vehicles generally. Notwithstanding the provisions of this part, any person possessing one or more junk vehicles, regardless of ownership, shall shield the vehicles from public view or remove the vehicles to a licensed motor vehicle wrecking facility or to a licensed motor vehicle graveyard after the vehicles are released from the owner. Small accumulations of salvageable vehicles or component parts, none of which are offered for sale, retained by active farming or ranching operations for repair and maintenance of vehicles, or agricultural equipment used in their operations, are exempted from this requirement.

History: En. Sec. 6, Ch. 572, L. 1991.

Cross-References

Component part defined, 75-10-501.

75-10-506 through 75-10-510 reserved.

75-10-511. Motor vehicle wrecking facility and motor vehicle graveyard licenses. (1) A person may not conduct, maintain, or operate a motor vehicle wrecking facility or motor vehicle graveyard without a license issued by the department.

(2) Application for the license shall be made on forms furnished by the department.

(3) An annual fee of $50 shall be paid to the department for the license or quarterly prorated for new facilities.

(4) A motor vehicle graveyard is excluded from paying the annual license fee but must meet all other requirements of the part.

(5) A license shall be displayed in a prominent place in the licensed facility or graveyard.

(6) The license expires on December 31 of the year issued.

(7) If a motor vehicle wrecking facility ceases to do business, the license shall be surrendered to the department. The license is not transferable.

History: En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(1) thru (6).

75-10-512. Records required of facilities. (1) Each motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name and address of the person from whom the vehicle was purchased.

(2) This record must also contain:

(a) the certificate of ownership, sheriff's certificate of sale, notarized bill of sale from the former owner or person selling the vehicle, release of ownership or interest in the motor vehicle, or sheriff's release;

(b) the name of the state where the vehicle was last registered;

(c) the make of the vehicle;

(d) the vehicle identification number as defined in 61-3-210 or the motor number, identification number, or serial number;

(e) the date purchased;

(f) the disposition of the vehicle.

(3) An authorized representative of the department of justice who presents credentials may also inspect, have access to, and copy records required under this section.

History: En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(1), (2); amd. Sec. 1, Ch. 427, L. 1985; amd. Sec. 5, Ch. 725, L. 1991; amd. Sec. 76, Ch. 10, L. 1993.

75-10-513. Disposal of junk vehicles — fees and records. (1) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of $2 for each vehicle submitted, and the vehicle is then the property of the state.

(2) Quarterly, each motor vehicle wrecking facility shall mail to the department of justice, on a form approved by the department of justice, a list of all junk vehicles received by the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If a certificate of ownership is received for a junk vehicle on the list, that certificate of ownership must accompany the list. The department of justice shall issue a receipt for the certificate of ownership if requested by the licensed facility, and the receipt may serve as an instrument for reclaiming the certificate of ownership if the vehicle is rebuilt.

(3) A motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by it that are required by rules of the department.

History: En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(3); amd. Sec. 2, Ch. 427, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 69, Ch. 18, L. 1995.

75-10-514. Denial, suspension, or revocation of license — grounds. (1) The department may deny or suspend a motor vehicle wrecking facility's license on any of the following grounds:

(a) The applicant or licensee sold or otherwise disposed of a motor vehicle, trailer, or any part of a motor vehicle or trailer when it knew the vehicle or part was stolen or was appropriated without the consent of the owner.

(b) The applicant or licensee committed forgery on a certificate of title covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles.

(c) The applicant or licensee committed any illegal act or omission that has caused loss as the result of a sale of a motor vehicle, trailer, or part of a motor vehicle or trailer.

(d) The applicant or licensee failed to comply with this part or with a rule of the department.

(e) The applicant or licensee obtained a license fraudulently.

(2) The department may revoke a motor vehicle wrecking facility's license on the following grounds:

(a) the license was suspended pursuant to subsection (1)(d) and the facility failed to cure the defect or defects underlying the suspension during the period of suspension; or

(b) the license was suspended pursuant to subsection (1)(a), (1)(b), (1)(c), or (1)(e) and, after suspension, the licensee performed an act that is grounds for suspension pursuant to subsections (1)(a) through (1)(e) at any time during the remaining active life of the facility.

History: En. Sec. 9, Ch. 410, L. 1973; R.C.M. 1947, 69-6809; amd. Sec. 2, Ch. 213, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 213 at beginning of (1)(a), (1)(b), (1)(c), (1)(d), and (1)(e) inserted reference to applicant or licensee; in (1), after "suspend", deleted "or revoke" and at end substituted "on any of the following grounds" for "when it proves the business"; inserted (2) relating to revocation of a license; and made minor changes in style. Amendment effective April 8, 1997.

75-10-515. Appeals. A decision by the department to issue, deny, or revoke a motor vehicle wrecking facility or graveyard license may be appealed to the board within 30 days after receipt of official notice of the department's decision.

History: En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(7).

75-10-516. Motor vehicle wrecking facilities and motor vehicle graveyards — licensing process — decision criteria. (1) When an application for a motor vehicle wrecking facility or motor vehicle graveyard is filed with the department, the department shall notify by mail:

(a) each owner of property adjoining the proposed facility;

(b) the governing body of the county in which the proposed facility is to be located; and

(c) a newspaper of general circulation in the area where the proposed facility is to be located.

(2) Within 30 days of receipt of the notification in subsection (1)(b), the governing body of the county may:

(a) conduct a public hearing to determine whether the proposed facility will significantly affect the quality of life of adjoining landowners and the surrounding community; and

(b) adopt a resolution in support of or opposition to the location of the proposed facility and transmit a copy of the resolution to the department.

(3) The department may not grant a license to a facility that a governing body has opposed under subsection (2)(b).

(4) In making its decision to grant or deny a license application, the department shall consider the effect of the proposed facility on adjoining landowners and land uses.

History: En. Sec. 1, Ch. 607, L. 1991.

Cross-References

Motor vehicle graveyard and motor vehicle wrecking facility defined, 75-10-501.

75-10-517 through 75-10-519 reserved.

75-10-520. Disposal of damaged vehicle when insurance company settles at total loss. An insurance company settling an insurance claim on a damaged motor vehicle as a total loss less salvage may dispose of the motor vehicle at a motor vehicle wrecking facility only if it is licensed under the provisions of 75-10-511.

History: En Sec. 1, Ch. 244, L. 1979.

Cross-References

Transfer of ownership of vehicle by insurance company, 61-3-205.

75-10-521. Powers and duties of county motor vehicle recycling and disposal programs. (1) (a) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(b) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards, but any such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this part.

(2) Two or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this part pertaining to a county also apply to a district formed under this subsection.

(3) When there is an accumulation of at least 200 junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(4) The county commissioners of each county shall designate a representative to be responsible for implementing this part.

(5) Each county, through its designated representative, shall inspect each licensed motor vehicle wrecking facility within its boundaries, consistent with rules adopted by the department.

(6) Each county may sell junk vehicles from the motor vehicle graveyard to licensed motor vehicle wrecking facilities. The sales may be conducted only pursuant to a plan that has been approved by the department for consistency with its rules.

(7) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(8) The county shall submit to the department for approval a proposed budget for the succeeding fiscal year. The budget shall be for the amounts required by the county for collection costs, acquisition, maintenance, and operation of the graveyard and for other duties relating to implementation of this part. Any proposed change in the budget or plan must be approved by the department.

History: En. Sec. 5, Ch. 410, L. 1973; amd. Sec. 2, Ch. 251, L. 1977; R.C.M. 1947, 69-6805; amd. Sec. 3, Ch. 572, L. 1991.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

75-10-522. Use of motor vehicle graveyards by individuals. An individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle or a written release of the vehicle.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(4).

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

75-10-523 through 75-10-530 reserved.

75-10-531. Crushing and recycling of junk vehicles. (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least 200 vehicles at the facility.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(1), (2).

75-10-532. Disposition of money collected. All money received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees must be deposited with the state treasurer to be used for the control, collection, recycling, and disposal of junk vehicles and component parts.

History: Ap. p. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; Sec. 69-6806, R.C.M. 1947; Ap. p. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; Sec. 69-6807, R.C.M. 1947; R.C.M. 1947, 69-6806(3), 69-6807(1); amd. Sec. 5, Ch. 241, L. 1983; amd. Sec. 4, Ch. 633, L. 1985; amd. Sec. 2, Ch. 718, L. 1985; amd. Sec. 198, Ch. 418, L. 1995.

75-10-533. Department to report fees. The department shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the amount collected under this part and 61-3-508 and the cost of administration of this part, except 75-10-520, to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(3); amd. Sec. 50, Ch. 112, L. 1991; amd. Sec. 44, Ch. 349, L. 1993.

75-10-534. Department to pay approved county budget. The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed $1 for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 such motor vehicles, the department may pay up to $5,000, providing the county can justify this payment. Counties realizing revenue from the sale of junk vehicles shall return to the state junk vehicle program revenue account money equal to the salvage value of each vehicle sold. The salvage value of a vehicle must be the average contract value of a crushed ton of junk vehicles as determined by the statewide salvage bids received by the department during the current fiscal year. Any additional revenue realized from the sale of junk vehicles may be retained by the county for use in the county's junk vehicle program in addition to the approved junk vehicle collection and graveyard budget of the county.

History: **En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(4); amd. Sec. 4, Ch. 572, L. 1991.**

75-10-535 through 75-10-539 reserved.

75-10-540. Administrative enforcement. (1) When the department determines that a violation of this part, a violation of a rule adopted under this part, or a violation of a license provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time. The order becomes final 30 days after the notice is served unless the person named requests, in writing, a hearing before the board. On receipt of the request for a hearing, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or change the department's order. An order may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) The department shall make efforts to obtain voluntary compliance through warning, conference, or any other appropriate means before issuing an order pursuant to subsection (1).

History: **En. Sec. 1, Ch. 213, L. 1997.**

Compiler's Comments

Effective Date: Section 5, Ch. 213, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 8, 1997.

75-10-541. Injunction — action to collect civil penalty — authority of department of justice. (1) The department may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) The department may sue in district court to collect a civil penalty as provided in 75-10-542.

(3) Upon request of the department, the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located may petition the district court to enjoin further operation or maintenance of a motor vehicle wrecking facility or graveyard or to impose, assess, and recover a civil penalty, as appropriate.

(4) The department of justice, through the attorney general or the county attorney of the county in which a facility is located, may sue in district court to collect a civil penalty as provided in 75-10-542 for violations of 75-10-512 or 75-10-513(2) discovered during department of justice inspections.

History: **En. Sec. 10, Ch. 410, L. 1973; amd. Sec. 7, Ch. 252, L. 1977; R.C.M. 1947, 69-6810; amd. Sec. 5, Ch. 572, L. 1991; amd. Sec. 6, Ch. 725, L. 1991.**

Cross-References

Injunctions, Title 27, ch. 19.

75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined not to exceed $250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued as provided in this part shall be subject to a civil penalty of not more than $50. Each day upon which a violation of this part or a rule or order occurs is a separate violation.

History: En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; R.C.M. 1947, 69-6812.

Cross-References

Execution of criminal fine, 46-19-102.

Part 6
State Participation in CERCLA

Part Cross-References

Allocation of junk vehicle regulatory fees to Department for implementation of part, 75-10-532.

75-10-601. Purpose. The legislature finds that the existence of hazardous substances and contaminants in the environment and hazardous waste disposal sites poses a significant health hazard through potential and actual contamination of the environment. This part is therefore enacted to protect the public health, safety, and welfare through cooperation with the federal government under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide for the disposal and control of such hazardous substances and contaminants in a safe and environmentally sound manner.

History: En. Sec. 1, Ch. 241, L. 1983.

75-10-602. Definitions. As used in this part, the following definitions apply:

(1) "CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.

(2) (a) "Contaminant" includes but is not limited to any element, substance, compound, or mixture, including disease-causing agents, that after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organisms or their offspring.

(b) The term does not include petroleum (including crude oil or any fraction of crude oil that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) (a) "Hazardous substance" means:

(i) any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act;

(ii) any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal environmental protection agency pursuant to section 102 of CERCLA;

(iii) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the federal Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of congress);

(iv) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act;

(v) any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the environmental protection agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.

(b) The term does not include petroleum (including crude oil or any fraction of crude oil that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and synthetic gas.

(5) "Hazardous waste" means a solid waste or combination of solid wastes that because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(6) "President" means the president of the United States.

(7) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment but excludes:

(a) any release that results in exposure to persons solely within a workplace, with respect to a claim that persons may assert against their employer;

(b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(c) (i) the release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of that act; or

(ii) for the purposes of section 104 of CERCLA or any other response action, any release of source byproduct or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the federal Uranium Mill Tailings Radiation Control Act of 1978; and

(d) the normal application of fertilizer.

(8) (a) "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment that prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to the present or future public health or welfare or the environment. The term includes but is not limited to those actions at the location of the release as storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of released hazardous substances or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; provision of alternative water supplies; and any monitoring reasonably required to ensure that the actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities if the president determines that, alone or in combination with other measures, the relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or is otherwise necessary to protect the public health or welfare.

(b) The term does not include offsite transport of hazardous substances or the storage, treatment, destruction, or secure disposition offsite of the hazardous substances or contaminated materials unless the president determines that the actions:

(i) are more cost-effective than other remedial actions;

(ii) will create a new capacity to manage, in compliance with subtitle C of the federal Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

(iii) are necessary to protect public health or welfare or the environment from a present or potential risk that may be created by further exposure to the continued presence of the substances or materials.

History: En. Sec. 2, Ch. 241, L. 1983; amd. Sec. 199, Ch. 418, L. 1995.

75-10-603. Cooperative agreement — authority of department. (1) In order to assist in implementation of CERCLA, the department may, subject to the provisions of 75-10-107:

(a) participate in the determination of appropriate remedial action to deal with the release or threatened release within Montana of:

(i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

(ii) any hazardous substance;

(b) in the event of the release or threatened release of any of the substances described in subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing mutual commitments of each party to remedial action, including the elements required by subsection (2).

(2) A cooperative agreement may contain the following assurances:

(a) the state of Montana will ensure the future maintenance of the removal and remedial actions agreed upon for the expected life of the actions;

(b) a hazardous waste disposal facility is available to the state of Montana that meets the specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and

(c) the state of Montana will pay or ensure payment of a share of the costs of the remedial action, including all future maintenance.

History: En. Sec. 3, Ch. 241, L. 1983; amd. Sec. 77, Ch. 10, L. 1993; amd. Sec. 16, Ch. 471, L. 1995.

75-10-604. Cooperative agreement — when effective. (1) If a cooperative agreement requires expenditure of state and federal funds which, together with the monetary obligation contained in any prior cooperative agreement made during the same biennium, exceeds the amount appropriated for that biennium for implementation of this part, the agreement is not effective until it is approved by the legislature and an appropriation is made providing the level of funding necessitated by the agreement.

(2) A cooperative agreement that does not require expenditure of funds exceeding the appropriation for the biennium for implementation of this part is effective when signed by the governor and the president or their respective representatives.

History: En. Sec. 4, Ch. 241, L. 1983.

75-10-605 through 75-10-620 reserved.

75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;

(b) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(c) to the extent funds are available after the appropriations in subsections (3)(a) and (3)(b), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(c), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the account until appropriated by the legislature for the purposes specified in this section.

History: En. Sec. 2, Ch. 408, L. 1987; amd. Sec. 15, Ch. 787, L. 1991; amd. Sec. 2, Ch. 16, Sp. L. November 1993.

75-10-622. CERCLA match debt service fund. (1) There is a CERCLA match debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the CERCLA match debt service fund as received an amount necessary to satisfy principal and interest payments due on outstanding CERCLA bonds.

History: En. Sec. 3, Ch. 408, L. 1987.

75-10-623. CERCLA bonds. (1) When authorized by the legislature and within limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to finance the match requirements under section 104 of CERCLA and to finance the match requirements for federal money for underground storage tank corrective action. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of environmental quality, at public or private sale, in the denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and

interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at the time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions of the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of the bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and any interest coupons appurtenant to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in 75-10-621.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members.

History: En. Sec. 4, Ch. 408, L. 1987; amd. Sec. 200, Ch. 418, L. 1995.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

75-10-624 reserved.

75-10-625. Authorization for sale of CERCLA bonds. The board of examiners is authorized to issue and sell CERCLA general obligation bonds in an amount not exceeding $10 million upon the request of the department of environmental quality, as provided for in 75-10-623. Proceeds of the bonds or notes are appropriated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of CERCLA, as amended, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes.

History: En. Sec. 1, Ch. 435, L. 1987; amd. Sec. 201, Ch. 418, L. 1995.

75-10-626. Agreement with department of environmental quality. For the proceeds of bonds or notes authorized and appropriated by this part, the board of examiners and the department of environmental quality may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves as may be required under the bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for the purposes presented in 75-10-625 must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year that the bonds are outstanding, if required. Payments by the department must be made from available funds.

History: En. Sec. 2, Ch. 435, L. 1987; amd. Sec. 202, Ch. 418, L. 1995.

75-10-627. Benefit of state. The agreement made pursuant to 75-10-626 is solely for the benefit of the state of Montana and is not enforceable by bondholders or other third-party beneficiaries.

History: En. Sec. 3, Ch. 435, L. 1987; amd. Sec. 75, Ch. 83, L. 1989.

75-10-628. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. Sec. 4, Ch. 435, L. 1987.

Part 7

Remedial Action Upon Release of Hazardous Substance

Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Director" means the director of the department.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian, conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person. The term does not include:

(a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

(b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part. For the purposes of 75-10-715(9), the term does not include the state, a state agency, or a political subdivision of the state acting as trustee of natural resources within the state of Montana.

(6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan obligation.

(7) "Fund" means the environmental quality protection fund established in 75-10-704.

(8) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or areas.

(10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived from a household.

(11) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other resources within the state of Montana owned, managed, held in trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(12) "Orphan share" means the percentage share of remedial action costs for a facility that is attributable, under the procedures in 75-10-742 through 75-10-752, to identified but bankrupt or defunct persons who are not affiliated with any viable person.

(13) "Orphan share fund" means the fund for the orphan share account established in 75-10-743.

(14) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(15) "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(16) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction of the product or waste that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(17) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

(18) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers, as defined in 80-10-101(2), when applied as part of accepted agricultural practice.

(19) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(20) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with

respect to a release or threatened release of a hazardous or deleterious substance.

(21) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection (21)(a) to provide services relating to a remedial action.

(22) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies.

History: En. Sec. 1, Ch. 711, L. 1985; amd. Sec. 1, Ch. 274, L. 1989; amd. Sec. 3, Ch. 709, L. 1989; amd. Sec. 52, Ch. 16, L. 1991; amd. Sec. 203, Ch. 418, L. 1995; amd. Sec. 1, Ch. 490, L. 1995; amd. Sec. 1, Ch. 584, L. 1995; amd. Sec. 4, Ch. 415, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 415 in definition of fiduciary, in (b), substituted "75-10-715(9)" for "75-10-715(7)"; inserted definitions of household, household refuse, orphan share, and orphan share fund; and made minor changes in style. Amendment effective July 1, 1997.

75-10-702. Rulemaking authority. (1) The department is authorized to adopt rules for the implementation of this part, including but not limited to:

(a) rules for listing and delisting facilities on a priority list, required by 75-10-704, based on the following criteria:

(i) a facility eligible for listing must have a confirmed release or substantial threat of a release of a hazardous or deleterious substance that may pose an imminent and substantial threat to public health, safety, or welfare or the environment and the department shall provide a written description of the nature and severity of the threat;

(ii) if remedial actions to address the hazardous or deleterious substances are required at the facility by another state program, the department shall explain, in writing, its rationale for listing the facility;

(iii) listing and delisting must be done through a formal process that provides for public participation, including participation of the affected or potentially liable persons in the decisionmaking process, by giving public notice and providing opportunity for at least one public meeting in the community most likely to be threatened by the facility that is proposed for listing or delisting; and

(iv) a facility must be delisted when another state program assumes jurisdiction or when further remedial actions are not necessary;

(b) rules for establishing and implementing a system for prioritizing facilities, including categories for maximum and high-priority facilities, as required by 75-10-704, for remedial action based on potential effects on human health and the environment.

(2) The rulemaking authority granted in subsection (1) may not invalidate the existing priorities list. Rules promulgated pursuant to subsection (1) must provide for the reevaluation of facilities on the existing priorities list. A decision by the department to list, delist, or establish a priority for a facility must be made in writing.

(3) The department shall adopt, amend, or repeal rules that allow for the joint selection of remedial action contractors acceptable to the department and any person liable for remedial action under 75-10-715.

History: **En. Sec. 7, Ch. 711, L. 1985; amd. Sec. 5, Ch. 415, L. 1997; (3)En. Sec. 5, Ch. 539, L. 1997.**

Compiler's Comments

1997 Amendment — Enactment: Chapter 415 in (1), at end, inserted "including but not limited to"; inserted (1)(a) and (1)(b) concerning rules for listing and delisting facilities on the priority list and rules for prioritizing facilities; inserted (2) concerning rules implementing subsection (1); and made minor changes in style. Amendment effective April 28, 1997.

Chapter 539 enacted (3) requiring the Department to adopt, amend, or repeal rules to allow for the joint selection of remedial action contractors. Enactment effective May 5, 1997.

Applicability: Section 7, Ch. 539, L. 1997, provided: "[This act] does not apply to any facility for which an administrative order has been issued pursuant to 75-10-711 prior to [the effective date of this act] [effective May 5, 1997] or to any facility for which the department of environmental quality and a liable or potentially liable person have, prior to [the effective date of this act] [effective May 5, 1997], entered into an agreement regarding the performance of remedial action for that facility."

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

75-10-703. Actions — general provisions. (1) No action taken by any person to contain or remove a release, whether the action is taken voluntarily or at the request of the department or its designee, may be construed as an admission of liability for the discharge.

(2) Actions taken by the department pursuant to 75-10-711 and 75-10-712 are not subject to the public bidding requirements of Title 18.

History: **En. Sec. 5, Ch. 711, L. 1985.**

75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund; and

(f) funds received from settlements pursuant to 75-10-719(7).

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.

History: En. Sec. 2, Ch. 711, L. 1985; amd. Sec. 11, Ch. 711, L. 1985; amd. Sec. 2, Ch. 555, L. 1987; amd. Sec. 1, Ch. 675, L. 1989; amd. Sec. 4, Ch. 709, L. 1989; amd. Sec. 53, Ch. 16, L. 1991; amd. Sec. 51, Ch. 112, L. 1991; amd. Sec. 1, Ch. 752, L. 1991; amd. Sec. 45, Ch. 349, L. 1993; amd. Sec. 1, Ch. 452, L. 1995; amd. Sec. 1, Ch. 86, L. 1997; amd. Sec. 6, Ch. 415, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 86 in (7)(e), after "intended", inserted "to delay" and deleted last sentence that read: "Subsections (7) and (8) do not pertain to facilities where the department has initiated actions under this part"; in (8)(d) substituted language prohibiting a person from avoiding liability or responsibility for costs or damages incurred from the release or threatened release of a hazardous or deleterious substance by subsequently donating money or in-kind services for former language that read: "This subsection does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance"; and made minor changes in style. Amendment effective March 19, 1997.

Chapter 415 in (3)(a), near middle, inserted "including the preparation of a priority list"; inserted (4)(e) and (4)(f) concerning funds received from interest income and funds received from settlements; and made minor changes in style. Amendment effective July 1, 1997.

Retroactive Applicability: Section 3, Ch. 86, L. 1997, provided: "[This act] [75-10-704] applies retroactively, within the meaning of 1-2-109, to private funds or in-kind services donated after April 14, 1995."

Cross-References

Fund structure, 17-2-102.

75-10-705. Short title. This part may be cited as the "Comprehensive Environmental Cleanup and Responsibility Act".

History: En. Sec. 1, Ch. 709, L. 1989.

75-10-706. Purpose. The purposes of this part are to:

(1) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

(2) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

(3) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

History: En. Sec. 2, Ch. 709, L. 1989.

75-10-707. Information gathering and access. (1) The department may undertake any investigative or other information-gathering action that it considers necessary or appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise enforcing the provisions of this part.

(2) Any authorized officer, employee, or representative of the department may require a person who has or may have information relevant to a release or threatened release of a hazardous or deleterious substance to furnish, upon request, any information or documents relating to but not limited to the following matters:

(a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is being generated, treated, stored, or disposed of at or transported from a facility;

(b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at or from a facility;

(c) information relating to the ability of a person to pay for or to perform a cleanup; and

(d) any other information relevant to the department's determination of the appropriate remedial action to be taken or to the enforcement of this part.

(3) For purposes of assisting the department in acquiring information relevant to the need for, the determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any authorized officer, employee, or representative of the department is authorized to:

(a) enter or have access at reasonable times to any facility or other place or property where:

(i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of, or transported from;

(ii) there has been or may be a release of a hazardous or deleterious substance;

(iii) records or other relevant information regarding a release or threatened release is located;

(iv) entry is necessary to determine the need for any appropriate remedial action; or

(v) entry is necessary to effectuate a remedial action under this part; and

(b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a) or from any location where a suspected hazardous or deleterious substance may be located. Any authorized officer, employee, or representative of the department is authorized to inspect and obtain samples of containers or labeling for suspected hazardous or deleterious substances. Each inspection must be completed with reasonable promptness. If the authorized officer, employee, or representative obtains samples, before leaving the premises that person shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of the samples must be furnished promptly to the owner, operator, tenant, or other person in charge if that person can be located.

(4) The department may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents relating to the matters in subsections (2)(a) through (2)(d). The method for service of subpoenas and payment of witness fees and mileage is the same as that required in civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a person pursuant to this subsection, the district court for a district in which the person is found,

resides, or transacts business, upon application of the department and after notice to the person, has jurisdiction to issue an order requiring the person to appear and either give testimony or produce documents, or both, before a hearings officer. A failure to obey the order of the court may be punished by the court as a contempt.

(5) If consent is not granted regarding a request made by an authorized officer, employee, or representative under this section, the director of the department may issue an order directing compliance with the request.

(6) The department may commence a civil action to compel compliance with an order issued pursuant to this section.

(7) In any action commenced pursuant to subsection (6) when the court determines that there may be an imminent and substantial threat to public health, safety, or welfare or the environment, the court shall enjoin any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless, under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with law.

(8) Persons subject to the requirements of this section may make a written claim of confidentiality for information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials at the time they are obtained by the department. If the department accepts the characterization, it shall maintain that information as confidential. Information describing physical or chemical characteristics of hazardous or deleterious substances that have been or may be released into the environment are not considered confidential. The department has access to and may use any trade secret information in carrying out the activities of this part as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential.

History: En. Sec. 5, Ch. 709, L. 1989; amd. Sec. 270, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (4), in first sentence, substituted "subsections (2)(a) through (2)(d)" for "75-10-707(2)(a) through (2)(d)"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

75-10-708 through 75-10-710 reserved.

75-10-711. Remedial action — orders — penalties — judicial proceedings. (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1) and each person that is liable or potentially liable under 75-10-715(1) has been given the opportunity by letter to properly and expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs the person that if subsequently found liable pursuant to 75-10-715(1), the person may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to this part.

(4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the public health, safety, or welfare or the environment.

(5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account:

(i) the nature, circumstances, extent, and gravity of the noncompliance;

(ii) with respect to the person liable under 75-10-715(1):

(A) the person's ability to pay;

(B) any prior history of violations;

(C) the degree of culpability; and

(D) the economic benefit or savings, if any, resulting from the noncompliance; and

(iii) any other matters as justice may require.

(b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending a decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part.

History: En. Sec. 3, Ch. 711, L. 1985; amd. Sec. 6, Ch. 709, L. 1989; amd. Sec. 2, Ch. 752, L. 1991; amd. Sec. 2, Ch. 490, L. 1995; amd. Sec. 1, Ch. 539, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 539 in first sentence of (1)(b), after "person liable under 75-10-715(1)", inserted "and each person that is liable or potentially liable under 75-10-715(1) has been given the opportunity by letter to properly and expeditiously perform the appropriate remedial action" and inserted second sentence requiring liable persons to take immediate action concerning the release; deleted former first sentence in (3) that read: "Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release"; in (4), near beginning after "subsection (1)", deleted "or has reason to believe that a release that may pose an imminent and substantial threat to the public health, safety, or welfare or the environment has occurred or is about to occur"; and made minor changes in style. Amendment effective May 5, 1997.

Applicability: Section 7, Ch. 539, L. 1997, provided: "[This act] does not apply to any facility for which an administrative order has been issued pursuant to 75-10-711 prior to [the effective date of this act] [effective May 5, 1997] or to any facility for which the department of environmental quality and a liable or potentially liable person have, prior to [the effective date of this act] [effective May 5, 1997], entered into an agreement regarding the performance of remedial action for that facility."

Cross-References

Injunctions, Title 27, ch. 19.

Nuisances — public and private, Title 27, ch. 30.

75-10-712. Emergency action. If the department determines that immediate response to an imminent threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, remedial action may be taken pursuant to 75-10-711(1) without the prior written notice required by 75-10-711(3). The department shall give subsequent written notice to the person liable under 75-10-715(1) within 5 days after the action is taken, describing the circumstances which required the action to be taken without prior notice.

History: En. Sec. 4, Ch. 711, L. 1985; amd. Sec. 7, Ch. 709, L. 1989.

75-10-713. Public notice of remedial action, administrative order, or consent decree — comments — meeting — response. (1) (a) Except as provided in 75-10-712, before final approval by the director of the department of any administrative order on consent, issued pursuant to 75-10-711, or before judicial approval of a consent decree issued pursuant to this part, the department shall:

(i) publish a notice and brief description of the proposed order or decree in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public;

(ii) provide at least 30 days (or whatever additional time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed order or decree and upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person), conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed order or decree; and

(iii) consider and respond to relevant written or verbal comments properly submitted during the comment period or at the public meeting.

(b) The administrative record supporting the department's approved order or decree must contain the department's response summary prepared pursuant to subsection (1)(a)(iii).

(2) Except as provided in 75-10-712, upon making a final decision regarding the proposed remedial action, order, or decree, the department shall publish notice, as provided under subsection (1), and make copies of the final decision on the approved order or decree available to the public.

(3) Except as provided in 75-10-712, the department shall:

(a) notify the county commissioners and governing bodies of cities, towns, and consolidated local governments impacted by a proposed remedial action; and

(b) at the request of the county commissioners or the governing body of a city or town or of a consolidated local government impacted by a remedial action, conduct a public meeting.

History: En. Sec. 15, Ch. 709, L. 1989; amd. Sec. 3, Ch. 752, L. 1991.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

75-10-714. Administrative penalties. (1) In lieu of proceeding under 75-10-711(5), the department may assess penalties of not more than $1,000 per day per violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the department pursuant to 75-10-707(5).

(2) In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The notice and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6.

(4) A person against whom a penalty is assessed under this section may obtain judicial review of the penalty as provided for in Title 2, chapter 4, part 7.

(5) Administrative penalties payable under this section must be deposited in the environmental quality protection fund established in 75-10-704.

History: En. Sec. 9, Ch. 709, L. 1989.

75-10-715. Liability — reimbursement and penalties — proceedings — defenses and exclusions. (1) Except as provided in 75-10-742 through 75-10-752, notwithstanding any other provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

(5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required;

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership, authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that the person:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person transported only household refuse, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

(e) Subsection (6) does not affect the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

(7) A person has an exclusion and is not liable under this section if:

(a) the person generated or disposed of only household refuse, unless the person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse;

(b) the person owns or operates real property where hazardous or deleterious substances have come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the person's property, provided that the following conditions are met:

(i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's or operator's property does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

(ii) the person who caused, contributed to, or exacerbated the release or threatened release of any hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department provides a written determination that an existing or proposed contractual relationship is an insufficient basis to establish liability under this section;

(iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or threatened release of a hazardous or deleterious substance; and

(iv) the owner or operator cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls;

(c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that the following conditions are met:

(i) the person did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substance through any act or omission;

(ii) the person uses or allows the use of the real property for residential purposes. This exclusion does not apply to any person who acquires or develops real property for commercial use or any use other than residential use.

(iii) at the time the person purchased or occupied the real property, there were no visible indications of contamination on the surface of the real property;

(iv) the person cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls; and

(v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or threatened release of a hazardous or deleterious substance.

(8) A person is liable under this section if the department provides substantial credible evidence that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

(9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701(14)(b) because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection (11).

(11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

(c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility.

History: En. Sec. 6, Ch. 711, L. 1985; amd. Sec. 11, Ch. 711, L. 1985; amd. Sec. 3, Ch. 555, L. 1987; amd. Sec. 10, Ch. 709, L. 1989; amd. Sec. 3, Ch. 490, L. 1995; amd. Sec. 7, Ch. 415, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 415 in (1), at beginning, inserted exception clause and near middle inserted "and the exclusions set forth in subsection (7)"; in (5), near beginning, inserted "has a defense"; in (5)(g), near beginning, substituted "transported" for "accepted" and after "only household refuse" deleted "(garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to a solid waste disposal facility"; inserted (7) concerning reasons for exclusion from liability; inserted (8) concerning liability for failure to satisfy elements for each exclusion in subsection (7); in (10), near end, substituted "75-10-701(14)(b)" for "75-10-701(10)(b)"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Fund structure, 17-2-102.

75-10-716. Definitions. As used in 75-10-717 and this section, the following definitions apply:

(1) "Emergency responder" means a public safety agency or a private entity acting under a request from or authority granted by a government agency, including law enforcement, firefighting, ambulance or medical, and civil defense, that provides services in an emergency situation.

(2) "Hazardous material incident" means a release involving a hazardous or deleterious substance that endangers property, public health, or public safety.

History: En. Sec. 1, Ch. 464, L. 1991.

75-10-717. Recovery of costs. An emergency responder has the right to recover from the responsible party the emergency responder's full costs directly related to a hazardous material incident.

History: En. Sec. 2, Ch. 464, L. 1991.

75-10-718. Liability of remedial action contractor. (1) A person who is a remedial action contractor with respect to a release or threatened release of a hazardous or deleterious substance is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or economic loss.

(2) Immunity from liability, pursuant to subsection (1), does not apply in the case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(3) This section does not affect the liability of a person under a warranty under federal, state, or common law or the liability to an employee of an employer who is a remedial action contractor under any provision of law, including any provision of a law relating to workers' compensation.

(4) A state agency or state employee or an employee of a political subdivision who provides services relating to remedial action while acting

within the scope of the entity's or individual's authority as a governmental agency or employee has the same exemption from liability as is provided to the remedial action contractor under this section.

(5) The defense provided by 75-10-715(5)(c) is not available to a person liable under 75-10-715(1) with respect to remedial action costs or damages caused by an act or omission of a remedial action contractor.

(6) Except as provided in subsections (4) and (5), this section does not affect the liability under this part of a person other than a remedial action contractor.

(7) This section does not affect the plaintiff's burden of establishing liability under this part.

(8) This section does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

History: En. Sec. 8, Ch. 709, L. 1989; amd. Sec. 54, Ch. 16, L. 1991; amd. Sec. 4, Ch. 490, L. 1995.

75-10-719. Settlement — bar to contribution liability. (1) A person who has resolved that person's liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA, 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

(2) If the state has obtained less than complete relief from a person who has resolved that person's liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other person who has not resolved that person's liability.

(3) A person who has resolved, in whole or in part, that person's liability to the state for the release or for remedial action costs in an administrative or judicially approved settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

(4) Whenever practicable and in the public interest, as determined by the director of the department, the department may, as promptly as possible, reach a final settlement with a potentially liable or liable person under 75-10-715 in an administrative or civil action under 75-10-711 if the settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the department, taking into account the toxicity of the hazardous or deleterious substances involved and the person's contribution of hazardous or deleterious substances in relation to the total volume of hazardous or deleterious substances at the facility, the conditions in any of the following subsections (4)(a) through (4)(d) are met:

(a) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial credible evidence that the person contributed less than 0.002% of the total volume or less than 100 gallons or 200 pounds of materials containing hazardous or deleterious substances at a facility that received hazardous or deleterious substances from multiple contributors. The department may not require the payment of remedial action costs from this person.

(b) (i) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial credible evidence that the person arranged for disposal or treatment of less than 5% of the total quantity of solid waste or hazardous or deleterious substances disposed of at a facility that received solid waste or hazardous or deleterious substances from multiple contributors.

(ii) For the purposes of subsection (5)(a) and this subsection (4)(b) only, the term "solid waste" means:

(A) all putrescible and nonputrescible wastes, including garbage, rubbish, refuse, or ashes;

(B) sludge from sewage treatment plants, water supply plants, or air pollution control facilities;

(C) construction and demolition wastes;

(D) dead animals, including offal;

(E) discarded home and industrial appliances; and

(F) wood products or wood byproducts and inert materials.

(c) (i) the person:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous or deleterious substance at the facility through any action or omission.

(ii) This subsection (4)(c) does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

(d) the person presents substantial credible evidence that the person has a defense under 75-10-715(5).

(5) When reaching a settlement under subsection (4)(b), (4)(c), or (4)(d), the department may require the payment of remedial action costs not to exceed two times the person's reasonably projected liability for remedial action costs as determined by the department. Except as provided in subsection (6), the settlement must contain a reservation of rights clause in the event that the department obtains new information showing that the settling person no longer qualifies for a settlement because:

(a) the solid waste or hazardous or deleterious substances contributed by the person was of a greater volume or toxicity than originally estimated; or

(b) the settlement was reached under subsection (4)(c) and, after settlement, the department finds that the person had actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

(6) A person who agrees to a liability settlement may avoid the reservation of rights clause under subsection (5) by paying remedial action costs in the amount of four times the person's reasonably projected liability for remedial action costs as determined by the department.

(7) All funds received as a result of settlements under this section must be paid in the following order of priority:

(a) to the department as reimbursement for its remedial action costs at the facility;

(b) to liable persons as reimbursement for remedial action costs at the facility. In the event of an allocation under 75-10-742 through 75-10-752, the reimbursement must be in proportion to each liable person's share of liability as determined under the provisions of 75-10-750 or 75-10-751;

(c) the remainder, if any:

(i) to the orphan share fund provided in 75-10-743 if the facility went through the allocation process provided in 75-10-742 through 75-10-752; or

(ii) to the fund provided in 75-10-704 if the facility did not undergo the allocation process provided in 75-10-742 through 75-10-752.

(8) Any person who enters into a settlement under this section may not be subject to or assigned a share in the allocation process provided in 75-10-742 through 75-10-752.

(9) As part of an administrative or judicially approved settlement agreement, the department may require the liable person to provide financial assurance, in an amount determined by the department, to ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability.

History: En. Sec. 11, Ch. 709, L. 1989; amd. Sec. 4, Ch. 752, L. 1991; amd. Sec. 8, Ch. 415, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 415 in (4), after "reach a final settlement with a", substituted "potentially liable or liable person" for "person liable", near middle substituted "remedial action" for "response", inserted "taking into account the toxicity of the hazardous or deleterious substances involved and the person's contribution of hazardous or deleterious substances in relation to the total volume of hazardous or deleterious substances at the facility", and substituted "through (4)(d)" for "or (4)(b)"; in (4)(a) substituted current text concerning liability based on 75-10-715, contribution of less than 0.002%, and prohibition of requirement for payment of remedial action costs for "Both of the following are minimal in comparison to other hazardous or deleterious substances at the facility:

(i) the amount of the hazardous or deleterious substances contributed by that person to the facility;

(ii) the toxic or other hazardous effects of the substances contributed by that person to the facility"; inserted (4)(b) concerning liability based upon 75-10-715(1)(c) or (1)(d), proof of disposal or treatment of less than 5% of the hazardous or deleterious substances disposed of, and definition of solid waste; inserted (4)(d) concerning substantial credible evidence of a defense; inserted (5) concerning settlement; inserted (6) concerning agreement to liability settlement avoiding reservation of rights; inserted (7) concerning priority for payment of settlement funds; inserted (8) concerning settlement prohibiting application of allocation process; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

75-10-720. Condemnation — creation of state lien. (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts 1 through 3.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the property that belong to the person.

(3) The lien imposed by this section arises at the time notice incorporating a description of the property subject to the remedial action and an identification of the amount of costs, penalties, and natural resource damages is filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the liable person.

(4) The costs, penalties, and natural resource damages constituting the lien may be recovered in an action in the district court for the district in which the property is located or in which the remedial action is occurring or has occurred. This section does not affect the right of the state to bring an action against a person to recover all costs, penalties, and natural resource damages for which that person is liable under this part or any other provision of state or federal law.

(5) The lien must continue until the liability for the costs and damages incurred as a result of the release of a hazardous or deleterious substance is satisfied.

(6) If the department expends money from the fund for orphan share remedial action costs at a facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for the unrecovered costs. The lien:

(a) may not exceed the increase in fair market value of the property attributable to the unfunded portion of the remedial action at the time of a subsequent sale or other disposition of the property;

(b) arises at the time costs are first incurred by the department with respect to a remedial action at the facility;

(c) must be filed according to subsection (3); and

(d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs incurred at the facility.

(7) Payment of any liens under this section must be deposited in one of the two accounts from which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share fund established in 75-10-743.

History: En. Sec. 12, Ch. 709, L. 1989; amd. Sec. 9, Ch. 415, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 415 inserted (6) concerning expenditure of money for orphan share remedial action and state's lien following expenditure; inserted (7) regarding deposit of payment of liens; and made minor changes in style. Amendment effective July 1, 1997.

75-10-721. Degree of cleanup required — permit exemption — financial assurance. (1) A remedial action performed under this part or a voluntary cleanup under 75-10-730 through 75-10-738 must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) except as provided in subsection (4), shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) may consider substantive state or federal environmental requirements, criteria, or limitations that are relevant to the site conditions; and

(c) shall select remedial actions, considering present and reasonably anticipated future uses, that:

(i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare and the environment;

(ii) are effective and reliable in the short term and the long term;

(iii) are technically practicable and implementable;

(iv) use treatment technologies or resource recovery technologies if practicable, giving due consideration to institutional and engineering controls; and

(v) are cost-effective.

(3) In selecting remedial actions, the department shall consider the acceptability of the actions to the affected community, as indicated by community members and the local government.

(4) The department may select a remedial action that does not meet an applicable state environmental requirement, criteria, or limitation under any one of the following circumstances:

(a) The remedial action is an interim measure and will become part of a total remedial action that will attain the applicable requirement, criteria, or limitation.

(b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to human health and the environment than other remedial action alternatives.

(c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable from an engineering perspective.

(d) The remedial action will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement, criteria, or limitation through use of another method or approach.

(e) Compliance with the requirement would not be cost-effective.

(5) For purposes of this section, cost-effectiveness must be determined through an analysis of incremental costs and incremental risk reduction and other benefits of alternatives considered, taking into account the total anticipated short-term and long-term costs of remedial action alternatives considered, including the total anticipated cost of operation and maintenance activities.

(6) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under this section and this part.

(7) The department may require financial assurance from a liable person in an amount that the department determines will ensure the long-term operation and maintenance of the remedial action site. The liable person shall

provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability.

History: **En. Sec. 13, Ch. 709, L. 1989; amd. Sec. 5, Ch. 752, L. 1991; amd. Sec. 2, Ch. 584, L. 1995.**

75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department may require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part.

(5) An initial action brought under 75-10-715(4) or a contribution action for costs incurred under this part must be commenced within 6 years after initiation of physical onsite construction of the final permanent remedy.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704.

History: **En. Sec. 14, Ch. 709, L. 1989; amd. Sec. 5, Ch. 490, L. 1995; amd. Sec. 3, Ch. 584, L. 1995.**

75-10-723. Agreements and administrative orders on consent to perform remedial action. (1) To expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever practicable and in the public interest, may negotiate and enter into an agreement or an administrative order on consent with any person, including the owner or operator of the facility from which a release emanates, to perform a remedial action if the department determines that the action will be properly done by the person. The agreement must contain terms and conditions that the department in its discretion determines to be appropriate.

(2) Whenever the department enters into an administrative order on consent under this section for remedial action or for assessment or payment of natural resource damages, that administrative order on consent must be available for public comment for at least 30 days.

(3) A decision of the department to enter into or not enter into agreements or administrative orders on consent under this section is not subject to judicial review.

History: **En. Sec. 16, Ch. 709, L. 1989; amd. Sec. 2, Ch. 539, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 539 in (1), near middle of first sentence after "agreement", inserted "or an administrative order on consent"; in (2), near beginning after "enters into", substituted "an administrative order on consent" for "an agreement" and near middle, after "damages", substituted "that administrative order on consent" for "the agreement must be filed in an appropriate district court as a consent decree and"; and in (3), after "agreements", inserted "or administrative orders on consent". Amendment effective May 5, 1997.

Applicability: Section 7, Ch. 539, L. 1997, provided: "[This act] does not apply to any facility for which an administrative order has been issued pursuant to 75-10-711 prior to [the effective date of this act] [effective May 5, 1997] or to any facility for which the department of environmental quality and a liable or potentially liable person have, prior to [the effective date of this act] [effective May 5, 1997], entered into an agreement regarding the performance of remedial action for that facility."

75-10-724. Private right of action. Any person who receives notice under 75-10-711, who is held jointly and severally liable under 75-10-715, or who initiates a voluntary cleanup under the provisions of 75-10-730 through 75-10-738 may bring a private right of action, including a claim for contribution or declaratory relief, against any other person who is liable or potentially liable under 75-10-715 for the recovery of remedial action costs. In resolving contribution claims, the court shall allocate remedial action costs among the liable persons based on the factors set out in 75-10-750.

History: En. Sec. 17, Ch. 709, L. 1989; amd. Sec. 10, Ch. 415, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 415 near beginning inserted "who receives notice under 75-10-711" and substituted "or who initiates a voluntary cleanup under the provisions of 75-10-730 through 75-10-738 may bring a private right of action, including a claim for contribution or declaratory relief, against any other person who is liable or potentially liable under 75-10-715 for the recovery of remedial action costs. In resolving contribution claims, the court shall allocate remedial action costs among the liable persons based on the factors set out in 75-10-750" for (1) and (2) granting right to apportionment of liability, considerations affecting apportionment, and right to contribution (see 1997 Session Law for former text). Amendment effective July 1, 1997.

75-10-725. Immunity of volunteer fire company or department and employees for hazardous or deleterious substance cleanup. A volunteer fire company or department that is organized by a municipality, county, rural fire district, fire service area, or other entity and the employees of the company or department are not liable for civil damages, except damages for gross negligence or willful or wanton misconduct, for their acts or omissions that are directly related to the hazardous material incident.

History: En. Sec. 1, Ch. 367, L. 1995.

75-10-726. Citizens suit. (1) Any person may commence a civil action to compel compliance by any liable or potentially liable person under 75-10-715 alleged to be in violation of a rule, notice letter, order, or department-approved remedial action required pursuant to a notice letter or order under this chapter.

(2) At least 60 days before commencing the action, the person shall give notice of intent to sue to all liable or potentially liable persons under 75-10-715 who are contemplated to be defendants in the proposed action.

(3) An action may not be commenced under subsection (1) if the liable or potentially liable person is diligently coming into compliance with the rule, notice letter, order, or department-approved remedial action plan or if the department has commenced and is diligently prosecuting an action to require

compliance with the rule, notice letter, order, or department-approved remedial action plan.

History: En. Sec. 11, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

75-10-727 through 75-10-729 reserved.

75-10-730. *(Temporary)* **Short title.** Sections 75-10-730 through 75-10-738 may be cited as the "Voluntary Cleanup and Redevelopment Act". *(Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)*

History: En. Sec. 4, Ch. 584, L. 1995.

75-10-731. *(Temporary)* **Purpose — legislative declaration.** (1) (a) The purposes of 75-10-730 through 75-10-738 are to provide for the protection of the public health, welfare, and safety and of the environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities where releases or threatened releases of hazardous or deleterious substances exist.

(b) The legislature further declares that this program is intended to permit and encourage voluntary cleanup of facilities where releases or threatened releases of hazardous or deleterious substances exist by providing interested persons with a method of determining what the cleanup responsibilities will be for reuse or redevelopment of existing facilities.

(2) The legislature further intends that this voluntary program:

(a) encourage and facilitate prompt cleanup activities;

(b) eliminate impediments to the sale or redevelopment of facilities where releases or threatened releases of hazardous or deleterious substances exist; and

(c) minimize administrative processes and costs. *(Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)*

History: En. Sec. 5, Ch. 584, L. 1995.

75-10-732. *(Temporary)* **Eligibility.** (1) A facility where there has been a release or threatened release of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part, except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:

(a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C. 9601, et seq.;

(b) a facility for which an order has been issued or consent decree has been entered into pursuant to this part;

(c) a facility that is the subject of an agency order or an action filed in district court by any state agency that addresses the release or threatened release of a hazardous or deleterious substance; or

(d) a facility where the release or threatened release of a hazardous or deleterious substance is regulated by the Montana Hazardous Waste and Underground Storage Tank Act and regulations under that act; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent.

(2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to accept and may approve an application for a voluntary cleanup plan for a facility.

(3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.

(4) If an applicant who submits an application for a voluntary cleanup plan disagrees with the department's decision to reject the filing of the application under subsection (1) or (3) or disagrees with the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written request for a hearing before the board of environmental review. In reviewing a department decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed to by the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2). *(Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)*

History: En. Sec. 6, Ch. 584, L. 1995; amd. Sec. 3, Ch. 539, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 539 in (4), in first sentence near beginning after "subsection (1) or (3)", inserted "or disagrees with the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736" and in second sentence, near beginning after "subsection (1) or (3)", inserted "or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736"; and made minor changes in style. Amendment effective May 5, 1997.

Applicability: Section 7, Ch. 539, L. 1997, provided: "[This act] does not apply to any facility for which an administrative order has been issued pursuant to 75-10-711 prior to [the effective date of this act] [effective May 5, 1997] or to any facility for which the department of environmental quality and a liable or potentially liable person have, prior to [the effective date of this act] [effective May 5, 1997], entered into an agreement regarding the performance of remedial action for that facility."

75-10-733. *(Temporary)* **Voluntary cleanup plan and reimbursement of remedial action costs.** (1) Any person may submit an application for the approval of a voluntary cleanup plan to the department under the provisions of this section.

(2) A voluntary cleanup plan must include:

(a) an environmental assessment of the facility that includes the information required in 75-10-734;

(b) a remediation proposal that includes the information required in 75-10-734 and that meets the requirements of 75-10-721; and

(c) the written consent of current owners of the facility or property to both the implementation of the voluntary cleanup plan and access to the facility by the applicant and its agents and the department.

(3) The applicant shall reimburse the department for any remedial action costs that the state incurs in the review and oversight of a voluntary cleanup plan.

(4) The department may approve a voluntary cleanup plan that provides for phases of remediation or that addresses only a portion of the facility. To the extent that the original environmental assessment required under 75-10-734 addresses subsequent phases of remediation, the applicant may rely on that assessment when submitting voluntary cleanup plans for subsequent phases of remediation. *(Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)*

History: En. Sec. 7, Ch. 584, L. 1995.

75-10-734. *(Temporary)* **Voluntary cleanup plans — requirements.** (1) The department may only accept voluntary cleanup plans under 75-10-730 through 75-10-738 that are prepared by a qualified environmental professional. A qualified environmental professional is a person with education, training, and experience in preparing environmental studies and assessments.

(2) An environmental assessment described in this section must include the following information:

(a) the legal description of the facility and a map identifying the location and size of the facility and relevant features, such as property boundaries, surface topography, surface and subsurface structures, and utility lines;

(b) the physical characteristics of the facility and areas contiguous to the facility, including the location of any surface water bodies and ground water aquifers;

(c) the location of any wells located on the site or on areas within a one-half mile radius of the site and a description of the use of those wells;

(d) the current and reasonably anticipated future use of onsite ground and surface water;

(e) the operational history of the facility, including ownership, and the current use of the facility, including any readily available aerial photographs from within the state of Montana;

(f) the current and reasonably anticipated future uses of the facility and immediately adjacent properties;

(g) information on the methods and results of investigations concerning the nature and extent of any releases or threatened releases of hazardous or deleterious substances that have occurred at the facility and a map showing general areas and concentrations of hazardous or deleterious substances;

(h) any sampling results or other data that characterizes the soil, air, ground water, or surface water on the site;

(i) a description of the human and environmental exposure to releases or threatened releases of hazardous or deleterious substances at the facility based upon the current use of the facility and adjacent properties and any reasonably anticipated future uses of the facility; and

(j) readily available information on the environmental regulatory and compliance history of the facility, including all environmental permits.

(3) A remediation proposal must include the following information:

(a) a detailed description of the components of the remediation proposal, including, to the extent applicable:

(i) the proposed cleanup levels for the facility;

(ii) the manner in which the remediation plan satisfies the cleanup requirements of 75-10-721;

(iii) identification of sampling or treatability studies; and

(iv) a demonstration that exposures to risk affecting the public health, safety, and welfare and the environment at the facility will be substantially mitigated by the plan;

(b) a brief comparison of the remediation proposal to reasonable alternatives based on the remedy selection criteria specified in 75-10-721;

(c) a timetable for implementing the proposal and for any necessary monitoring of the facility after the proposed measures are completed;

(d) a statement that applicable health and safety regulations will be met during implementation of the remediation proposal;

(e) a description of how short-term disturbances during implementation of the remediation proposal will be minimized; and

(f) identification of any permits necessary to conduct the proposed remedies. *(Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)*

History: En. Sec. 8, Ch. 584, L. 1995.

75-10-735. *(Temporary)* **Public participation.** (1) Upon determination by the department that an application for a voluntary cleanup plan is complete pursuant to 75-10-736(1), the department shall publish a notice and brief analysis of the proposed plan in a daily newspaper of general circulation in the area affected and make the plan available to the public.

(2) The notice must provide 30 days for submission of written comments to the department regarding the plan. Upon written request by 10 or more persons, by a group composed of 10 or more members, or by a local governing body of a city, town, or county within the comment period, the department shall conduct a public meeting at or near the facility regarding the proposed voluntary cleanup plan. The meeting must be held within 45 days of the department's completeness determination under 75-10-736(1).

(3) The department shall consider and respond to relevant written or verbal comments submitted during the comment period or at the public meeting.

(4) The department's decision on the final plan and the reasons for any significant modification of the final plan must be published in accordance with subsection (1).

(5) Compliance with this section is considered to satisfy the public participation requirements of Title 75, chapter 1. *(Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)*

History: En. Sec. 9, Ch. 584, L. 1995.

Cross-References

Right of participation, Art. II, sec. 8, Mont. Const.

75-10-736. *(Temporary)* **Approval of voluntary cleanup plan — time limits — content of notice — expiration of approval.** (1) The department shall review for completeness, including adequacy and accuracy, an application for a voluntary cleanup plan and shall provide a written completeness notice to the applicant within 30 days after receipt of an application for a plan that would take 24 months or less to complete and within 60 days for a plan that would take more than 24 months to complete. The completeness notice must note all deficiencies identified in the information submitted.

(2) For a voluntary cleanup plan that is considered complete by the department pursuant to subsection (1), the department shall provide formal written notification that the voluntary cleanup plan has been approved or disapproved no more than 60 days for a plan that would take 24 months or less to complete and within 75 days for a plan that would take more than 24 months to complete after the department's determination that an application is complete, unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents or information readily available to the department. The department shall communicate with the applicant during the review period to ensure that the applicant has the opportunity to address the public comments.

(3) (a) If the department receives five applications for review of a voluntary cleanup plan in a calendar month, including applications deferred from prior months, the department may notify any additional applicants in that month that their plans must be reviewed in the order received. The 30-day period for department completeness review of deferred applications pursuant to subsection (1) must begin on the first day of the subsequent month that each plan is eligible for review.

(b) The department shall discontinue accepting voluntary cleanup applications when 15 applications are pending and are being reviewed by the department. The department shall establish a waiting list for applications and shall consider the applications in order of submittal.

(c) If the department has received multiple cleanup applications for a voluntary cleanup at the same facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint application.

(4) Consistent with the provisions of 75-10-707, the department may access the facility during review of the application and implementation of the voluntary cleanup plan to confirm information provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

(5) The department shall approve a voluntary cleanup plan if the department concludes that the plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would take longer than 60 months after department approval to complete.

(6) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the board of environmental review in accordance with the provisions of 75-10-732(4).

(7) The approval of a voluntary cleanup plan by the department applies only to conditions at the facility that are known to the department at the time

of department approval. If a voluntary remediation proposal is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the approved remediation proposal, is not completed within 60 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.

(8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or substantially change the scope of the approved plan, the applicant shall promptly notify the department. The department may require the applicant to submit an amendment to the approved plan to address the unforeseen conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to 75-10-732(3).

(9) Written notification by the department that a voluntary cleanup plan is not approved must state the basis for disapproval of the voluntary cleanup plan.

(10) (a) Failure of the applicant or the applicant's agents to materially comply with the voluntary cleanup plan approved by the department pursuant to this section renders the approval void.

(b) Submission of materially misleading information by the applicant or the applicant's agents in the application or during implementation of the voluntary cleanup plan renders the department approval void.

(11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.

(12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.

(13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department pursuant to this section.

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct. *(Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)*

History: En. Sec. 10, Ch. 584, L. 1995; amd. Sec. 4, Ch. 539, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 539 in (1), at end of first sentence, inserted "for a plan that would take 24 months or less to complete and within 60 days for a plan that would take more than 24 months to complete"; in (2), near middle of first sentence after "60 days", inserted "for a plan that would take 24 months or less to complete and within 75 days for a plan that would take more than 24 months to complete"; in (5) and (7) substituted "60 months" for "24 months"; in (6) inserted second sentence allowing a denial to be appealed to the Board of Environmental Review; and made minor changes in style. Amendment effective May 5, 1997.

Applicability: Section 7, Ch. 539, L. 1997, provided: "[This act] does not apply to any facility for which an administrative order has been issued pursuant to 75-10-711 prior to [the effective date of this act] [effective May 5, 1997] or to any facility for which the department of environmental quality and a liable or potentially liable person have, prior to [the effective date of this act] [effective May 5, 1997], entered into an agreement regarding the performance of remedial action for that facility."

75-10-737. *(Temporary)* **Voluntary action to preclude remedial action by department.** If a party has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan, the department may not, except as provided in 75-10-712, take remedial action under 75-10-711 with regard to those releases or threatened releases of hazardous or deleterious substances that are addressed by the approved voluntary cleanup plan. *(Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)*

History: En. Sec. 11, Ch. 584, L. 1995.

75-10-738. *(Temporary)* **Closure.** (1) After completion of the voluntary cleanup plan, an applicant may petition the department for closure of the facility under 75-10-730 through 75-10-738.

(2) Within 60 days of receipt of a petition for closure, weather permitting, the department shall conduct a review to determine that the releases or threatened releases addressed in the voluntary cleanup plan do not pose a significant threat to public health, welfare, or safety or to the environment as determined in accordance with 75-10-721 and that the applicant has:

(a) implemented all appropriate remedial actions;

(b) if necessary, provided for long-term funding for facility maintenance or monitoring; and

(c) reimbursed the department for all remedial action costs of the voluntary cleanup.

(3) In the event that the petition for closure is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. Written notification that the petition is approved by the department must include the following language:

"Based upon the information provided by [insert name(s) of applicant(s)] concerning property located at [insert address], it is the opinion of the Montana Department of Environmental Quality that upon completion of the voluntary cleanup plan, no further action is required to ensure that this facility, when used for [insert purposes identified], is protective of existing and proposed uses and does not pose a significant risk to public health, safety, or welfare or the environment at the facility with regard to releases or threatened releases addressed in the voluntary cleanup plan. The department reserves the right to conduct or require further remedial action at this facility if a new release occurs or if the department receives new or different information than presented in the approved voluntary cleanup plan."

(4) After completion of a portion of a facility addressed in the voluntary cleanup plan, the department shall issue a letter of completion notice to the applicant if the department determines that the applicant has satisfied the requirements of subsection (2). *(Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)*

History: En. Sec. 12, Ch. 584, L. 1995.

75-10-739 through 75-10-741 reserved.

75-10-742. *(Temporary)* **Short title.** Sections 75-10-742 through 75-10-752 may be cited as the "Controlled Allocation of Liability Act". *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 12, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-743. *(Temporary)* **Orphan share state special revenue account — reimbursement of claims — payment of department costs.** (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) money allocated from the metalliferous mines license tax pursuant to 15-37-117;

(b) all penalties assessed pursuant to 75-10-750(12);

(c) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(d) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(e) unencumbered funds remaining in the abandoned mines state special revenue account provided in section 19, Chapter 584, Laws of 1995, as of [the termination date of section 19, Chapter 584, Laws of 1995, as may be amended];

(f) interest income on the account;

(g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742

through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be deposited in the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 13, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-744. *(Temporary)* **Eligibility — statute of limitations.** (1) Except for a facility that is listed on the national priorities list pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., a facility listed on the priority list established pursuant to 75-10-702 is eligible for the allocation process under 75-10-742 through 75-10-752.

(2) Only liability for remedial action costs is eligible for allocation and reimbursement from the orphan share fund. Allocation of liability and reimbursement of costs for natural resource damages is not permitted under 75-10-742 through 75-10-752.

(3) Remedial action costs incurred prior to the date of the potentially liable person's written petition to the department as provided in 75-10-745 are not eligible for reimbursement from the orphan share fund.

(4) Only one allocation will be allowed for each facility unless:

(a) the department determines that an additional allocation is appropriate due to:

(i) the existence of more than one discrete unit of contamination at the facility;

(ii) the discovery of new releases after remedial actions at the facility are complete; or

(iii) other factors the department determines appropriate.

(b) all the liable or potentially liable persons under 75-10-715 agree in writing that an orphan share does not exist for the proposed allocation and either of the conditions in subsection (4)(a)(i) or (4)(a)(ii) is met.

(5) A liable or potentially liable person under 75-10-715 may not file a cost recovery or contribution action against any person participating in the allocation process provided for in 75-10-742 through 75-10-752 until the allocation process is complete. The statute of limitations on the filing of cost recovery or contribution actions is tolled from the first date of a petition for allocation on a facility until 30 days after the submittal of the allocation report provided for in 75-10-750, or until 30 days following the expiration of the time period for appeal or the final decision on appeal. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 14, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-745. *(Temporary)* **Allocation of liability — process initiation.** (1) For a facility at which the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior to July 1, 1997, any person determined to be potentially liable under 75-10-715 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(2) For a facility at which the department has not initiated a remedial action through the issuance of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(3) For a facility at which the department initiates a remedial action through the issuance of a notice letter under 75-10-711 after July 1, 1997, any person potentially liable under 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate the allocation process. Any potentially liable person under 75-10-715 who does not provide a written petition to the department within this timeframe waives the right to participate in the allocation process and remains liable as provided in

75-10-715. The notice letter sent by the department must advise that a failure to petition the department for allocation as provided in this subsection will result in a waiver of the right to participate in the allocation process.

(4) The allocation process may be initiated and may proceed upon written petition of one or more potentially liable persons.

(5) Prior to the initiation of discovery as provided in 75-10-747, all persons who participate in the allocation process shall agree in writing that the allocator's decision is binding, subject only to the provisions of 75-10-750(9) and the appeal provisions of 75-10-751.

(6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation process under 75-10-742 through 75-10-752 remain liable as provided in 75-10-715.

(7) Upon receipt of a written petition under subsections (1) or (2) or when initiating actions at a facility without a prior notice letter under subsection (3), the department shall:

(a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons who may be liable under 75-10-715; and

(b) issue notice letters to the persons it identifies as potentially liable under 75-10-715.

(8) A person who receives a notice letter may, within 60 days from the date of the notice letter, petition the department in writing to participate in an allocation process and provide the department with the identity of other potentially liable persons under 75-10-715 who were not noticed by the department. When identifying additional potentially liable persons, the noticed person shall provide to the department a statement and credible evidence showing that there is a basis in law and fact to determine that the identified person is potentially liable under 75-10-715.

(9) Within 30 days of receipt of the information provided for in subsection (8), the department may issue a notice letter to an identified person whom the department determines is a potentially liable person under 75-10-715. If the department does not issue a notice letter to an identified person, the department shall issue the person a nomination letter indicating that the person has been identified as potentially liable under 75-10-715. The nomination letter must state that the person has the right to participate in the allocation process and that if the person does not participate and is found liable, the person remains subject to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in the allocation process, the person shall provide a written petition of the person's intent to participate in the allocation process to the department within 30 days of the date of the notice or nomination letter. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(10) If a person nominated under subsection (9) cannot be readily located, the department shall, within 30 days of receipt of the information provided for in subsection (8), publish one notice of the person's nomination, along with the information contained in a nomination letter under subsection (9), in a newspaper of general circulation in the county where all or a portion of the facility is located. The notice must state that the person has 30 days from the date of the notice to petition the department, in writing, to participate in the

allocation process. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(11) If one or more potentially liable persons petition in writing for an allocation process under subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the department shall:

(a) publish a notice and brief description of the facility in a newspaper of general circulation in the area affected and provide at least 30 days for submission of public comment on the identification of potentially liable persons under 75-10-715; and

(b) notify interested persons and the county commissioners of each county in which all or a portion of the facility is located and provide at least 30 days for submission of comments on the identification of potentially liable persons under 75-10-715.

(12) If a nominated person participates in the allocation and the person is assigned a zero share of liability by the allocator, that person's reasonable costs of participating in the allocation, including attorney fees, must be borne by the person who proposed the addition of the nominated person to the allocation.

(13) If the department anticipates that a facility may have an orphan share, the department shall represent the orphan share in the allocation process. If the state is a potentially liable person under 75-10-715, an agency or entity other than the department shall represent the state in the allocation process.

(14) Except as provided in subsection (15), whenever the department is involved in allocation processes on five facilities, other allocation processes may be stayed before the discovery stage provided in 75-10-747. Upon completion of an allocation provided in 75-10-750 or 75-10-751, execution of a stipulated agreement under 75-10-750, or a default to liability as provided in 75-10-715 for one of the five facilities, the department shall notify the potentially liable persons for the facility on the waiting list that has the earliest date of written petition. Discovery under 75-10-747 must begin within 10 days of department notification.

(15) A stay on the allocation process may not occur under subsection (14) if all persons participating in the allocation process agree in writing that there is no orphan share and that the state is not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated persons.

(16) If, after initiating the process, a potentially liable person elects to discontinue participation in the process, the person remains subject to liability as provided in 75-10-715. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 15, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-746. *(Temporary)* **Emergency actions — remedial action requirements — designation of lead person — enforcement.** (1) If the department determines that immediate response to an imminent threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, the department may require any potentially liable person to take remedial actions without the prior written notice required by 75-10-711(3). The department has 30 days to comply with the notification requirements provided in 75-10-711(3) and 75-10-745 when requiring emergency remedial actions.

(2) Within 30 days of the issuance of the notice letters, the noticed persons shall designate a lead person who shall conduct remedial actions at the facility. Upon request of the noticed persons and for good cause shown, the department may grant a 30-day extension of time to identify the lead person.

(3) If the department determines that the identified lead person is financially or otherwise incapable of completing remedial actions required by the department, the department shall notify all noticed persons of this determination in writing and request that another lead person be designated within 15 days.

(4) The designated lead person shall undertake all remedial actions required by the department.

(5) If the noticed persons do not designate an approved lead person within the timeframes provided under subsection (2) or (3), the department shall designate a lead person to undertake required remedial actions.

(6) If the department finds that the lead person has not complied with the requirements of a notice letter, order, stipulated agreement, or any department-approved remedial action plan, the department shall notify all potentially liable persons of the noncompliance.

(7) If the noncompliance continues for 30 days after the date of the notice provided in subsection (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and the facility is a maximum or high-priority facility on the department's priority list established pursuant to 75-10-702, the department shall take one or more of the following actions:

(a) issue a unilateral order requiring the potentially liable persons to comply with the requirements of the notice letter, order, stipulated agreement, or department-approved remedial action plan;

(b) file a civil action as provided in 75-10-711;

(c) conduct the required remedial actions and seek cost recovery and penalties as provided in 75-10-711;

(d) file a cost recovery action as provided in 75-10-722; or

(e) void approval of the voluntary cleanup plan as provided in 75-10-736.

(8) If the noncompliance continues for 30 days after the date of the notice provided in subsection (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and the facility is not a maximum or high-priority facility on the department's priority list, the department may take one or more of the actions provided for in subsection (7).

(9) For purposes of subsections (7), (8), and (10), "good cause" means factors beyond a person's control that include severe weather conditions, third-party interference, an act of God, or an act of war. Before a person may claim good cause due to third-party interference, the person shall show that the person used reasonable efforts to obtain cooperation or compliance from the third party.

(10) If the lead person fails to comply with the requirements of a notice letter, order, stipulated agreement, or other department-approved remedial action plan, the facility and all noticed persons remain subject to liability as

provided in 75-10-715 unless another person assumes the lead role in implementing the required remedial actions or the lead person can establish that the noncompliance is due to good cause. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 16, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-747. *(Temporary)* **Discovery.** (1) Each person participating in the allocation process for a facility may conduct discovery for a period of not more than 90 days from the date of the last notice or nomination letter. Discovery requests by each person participating in the allocation process, including the orphan share representative, are limited to the following unless otherwise agreed to by all persons participating in the allocation, including the orphan share representative:

(a) 5 1-day oral depositions not to exceed 8 hours each;

(b) 25 written interrogatories, including subparts;

(c) 50 requests for admission; and

(d) 50 requests for production of documents.

(2) The persons participating in the allocation process may extend the discovery period for up to 30 days if all persons agree to the extension in writing.

(3) Any participating person who is not responsive to discovery requests or who does not participate in the subsequent allocation proceeding and is allocated a share of liability remains subject to liability as provided in 75-10-715. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 17, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-748. *(Temporary)* **Preallocation negotiations.** (1) After discovery pursuant to 75-10-747 closes, all persons participating in the allocation process shall conduct good faith settlement negotiations for a period of 30 days.

(2) The participating potentially liable persons may use an impartial mediator when conducting settlement negotiations.

(3) If a settlement is reached under subsection (1), the persons shall execute a stipulated agreement as provided in 75-10-750.

(4) If a stipulated agreement is not executed as provided in 75-10-750, the persons shall select an allocator as provided in 75-10-749. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 18, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-749. *(Temporary)* **Allocator selection — payment of fees.** (1) If the preallocation negotiations pursuant to 75-10-748 fail to produce a stipulated agreement within the timeframe provided in 75-10-748, the participating persons shall select an allocator within 30 days after the preallocation negotiations end. All participating persons shall agree on the selected allocator.

(2) Before selection or appointment as an allocator, a person shall disclose all conflicts of interest, including whether the allocator is or has been a relative, attorney, agent, employee, creditor, or contractor of, or in any manner is or has been interested financially or personally with, any person involved in the allocation.

(3) If the participating persons are unable to agree on an allocator within the required 30 days, one or more of the participating persons shall apply for judicial resolution, within 10 days, to the district court in the county where the release occurred or where any potentially liable person under 75-10-715 resides or has a principal place of business or in the district court of the first judicial district. If an application to the district court is not made within 10 days, all persons remain subject to liability as provided in 75-10-715 and the allocation process ends.

(4) Upon selection or appointment of the allocator, the lead person shall advance, if required by the allocator, up to $5,000 toward the allocator's expenses. Any expenses accrued by the allocator for legal or technical expertise must be approved in advance by all the participating persons. The allocator's fees and reasonable expenses must be divided among the participating liable persons, except the orphan share, in proportion to their allocated shares. The orphan share fund established in 75-10-743 is not responsible for any portion of the allocator's fees and expenses. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 19, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-750. *(Temporary)* **Allocating liability.** (1) Upon selection or appointment, the allocator shall establish the process and schedule for determining the allocation, including the length and scope of any documents to be presented.

(2) The participating persons shall submit to the allocator and to each other a statement of position and exhibits of a factual nature. Each person's statement must identify the factors listed in subsection (5) that the person believes are relevant to allocation of liability for the facility.

(3) The allocator may convene the participating persons as the allocator believes necessary to clarify the facts and may pose additional questions, interview any person or the person's representative, and impose presumptions concerning missing information. The allocator may seek department assistance with information gathering pursuant to 75-10-707.

(4) The allocator may not engage in ex parte communications with any person or the person's representative.

(5) The allocator shall allocate each participating and nonparticipating person's share of liability based only on information presented or collected during the allocation process and, taking into account facility characteristics, shall apportion liability on a percentage basis according to the following factors:

(a) the extent to which the person caused the release of the hazardous or deleterious substance;

(b) the extent to which the person's contribution to the release of a hazardous or deleterious substance can be distinguished;

(c) the amount or volume of hazardous or deleterious substance and the amount contributed by the person;

(d) the relative hazard of the hazardous or deleterious substance contributed by the person, including volatility, carcinogenicity, mobility, persistence, reactivity, and toxicity;

(e) the degree of past and present cooperation by the person with the government to prevent harm to the public health, safety, or welfare and the environment, including participation in remedial actions occurring concurrently with the allocation process and compliance and cooperation with discovery pursuant to 75-10-747;

(f) what the person knew or should have known of the hazardous nature of the substance, the risk associated with that substance, and proper waste disposal practices;

(g) the circumstances of the property acquisition, including the documented price paid and discounts granted;

(h) the person's knowledge of or acquiescence to waste generation, storage, handling, treatment, or disposal;

(i) the length of time of ownership, operation, generation, or transportation;

(j) any violations of or noncompliance with health and environmental regulations, including permit violations or violations relating to public notification;

(k) the degree to which a person providing publicly owned landfill or sewer and water systems had or has a reasonable ability to control disposed materials and the person's degree of care in maintaining those services;

(l) the person's financial or economic benefit from:

(i) ownership or operation of the facility;

(ii) the generation, transportation, or disposal of the hazardous or deleterious substance; and

(iii) cleanup of the facility;

(m) whether the person exercised due diligence in generating, transporting, or disposing of hazardous or deleterious substances and the person's control over those activities; and

(n) other equitable factors that are appropriate.

(6) Within 60 days of selection or appointment, the allocator shall submit to the department and all noticed and nominated persons a written allocation report that allocates each person's share of liability and that documents the rationale for the percentage of liability allocated to each person.

(7) The allocator or the participating persons may extend the allocation proceeding by up to 30 days if agreed to by the allocator and all the participating persons.

(8) Within 30 days of the date of the allocation report, the persons who participated in the allocation and who were allocated a share of liability, except for the orphan share, shall prepare and sign a stipulated agreement that contains:

(a) the percentage share of liability for each person as determined by the allocator;

(b) procedures for paying for the orphan share prior to reimbursement from the orphan share fund;

(c) a waiver of contribution rights against all persons who are potentially liable for the remedial action as well as a waiver of any rights to challenge any settlement that the department enters into with any other potentially liable person;

(d) covenants not to sue and provisions regarding performance or adequate assurance of performance of remedial actions;

(e) how remedial actions will be conducted;

(f) a penalty provision in accordance with subsection (12);

(g) acknowledgment of contribution protection, consistent with 75-10-719(1), regarding matters addressed in the settlement; and

(h) provisions detailing how the persons signing the stipulated agreement should receive reimbursement from the orphan share fund for any remedial action costs incurred by the persons in excess of their allocated share.

(9) If the department determines that the stipulated agreement does not satisfy the requirements of subsection (8), the liable persons who participated in the allocation remain subject to liability as provided in 75-10-715.

(10) A person who did not participate in the allocation but who was assigned a share of liability may sign the stipulated agreement prepared according to subsection (8).

(11) Any liable person allocated a share of liability who does not sign the stipulated agreement remains subject to liability as provided in 75-10-715.

(12) Any liable person who signs the stipulated agreement and fails to comply with the terms of the stipulated agreement shall pay, in addition to the person's share of remedial action costs, a penalty of two times the amount of the person's allocated share of liability. Any funds received must be applied to the facility's orphan share and any funds in excess of the facility's orphan share amount must be deposited in the orphan share fund established under 75-10-743.

(13) If a liable person becomes bankrupt or defunct after the stipulated agreement is signed and before remedial actions are complete at the facility, that person's share of liability becomes an orphan share. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 20, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-751. *(Temporary)* **Appeal of allocator's decision.** (1) A person may appeal the allocator's decision to district court within 30 days of the date of the allocation report. Venue lies in the county where the release occurred or where the liable person resides or has a principal place of business or in the first judicial district.

(2) The allocator's decision must be upheld unless the person appealing the decision demonstrates that the decision was:

(a) made upon unlawful procedure;

(b) affected by other error of law;

(c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(d) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion or was fraudulent.

(3) If the appeal is successful, the district court shall allocate the liability of the potentially liable persons using the factors outlined in 75-10-750.

(4) After decision on the appeal, all liable persons shall submit a stipulated agreement as provided in 75-10-750 to the department based on the court order. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 21, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

75-10-752. *(Temporary)* **Effect of termination on allocations.** (1) Persons participating in the allocation process may complete the allocation process for the facility at issue and claim reimbursement from the orphan share fund provided that the discovery process under 75-10-747 had been initiated by June 30, 2005.

(2) If discovery, as provided in 75-10-747, has not commenced by June 30, 2005, the facility and its potentially liable persons under 75-10-715 are not eligible to participate in the allocation process under 75-10-742 through 75-10-752 and remain subject to liability as provided in 75-10-715. *(Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)*

History: En. Sec. 22, Ch. 415, L. 1997.

Compiler's Comments

Effective Date: Section 29(1), Ch. 415, L. 1997, provided: "Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997."

Termination: Section 30, Ch. 415, L. 1997, provided: "[Sections 12 through 22] [75-10-742 through 75-10-752] terminate June 30, 2005."

Part 8
Integrated Waste Management

Part Cross-References

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Energy-related and ecological tax incentives, Title 15, ch. 32.

Notice of motor oil recycling center, 75-10-1101.

75-10-801. Short title. This part may be cited as the "Montana Integrated Waste Management Act".

History: En. Sec. 1, Ch. 222, L. 1991.

75-10-802. Definitions. As used in this part, the following definitions apply:

(1) "Composting" means the controlled biological decomposition of organic matter into humus.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Integrated waste management" means the coordinated use of a priority of waste management methods, including waste prevention, as specified in 75-10-804.

(4) "Postconsumer material" means only those paper products generated by a consumer that have served their intended end uses and have been separated or diverted from the solid waste stream.

(5) "Recycling" means all activities involving the collection of recyclable material, including but not limited to glass, paper, or plastic; the processing of recyclables to prepare them for resale; the marketing of recovered material for use in the manufacture of similar or different products; and the purchase of products containing recycled material.

(6) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment.

(7) "Waste reduction" means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream after consumer or commercial use but prior to incineration or disposal.

History: En. Sec. 2, Ch. 222, L. 1991; amd. Sec. 204, Ch. 418, L. 1995.

75-10-803. Solid waste reduction target. It is the goal of the state, by January 1, 1996, to reduce by at least 25% the volume of solid waste that is either disposed of in a landfill or incinerated.

History: En. Sec. 3, Ch. 222, L. 1991.

75-10-804. Integrated waste management priorities. It is the policy of the state to plan for and implement an integrated approach to solid waste management, which must be based upon the following order of priority:

(1) reduction of waste generated at the source;
(2) reuse of waste;
(3) recycling of waste;
(4) composting of biodegradable waste; and
(5) landfill disposal or incineration.

History: En. Sec. 4, Ch. 222, L. 1991.

75-10-805. State government source reduction and recycling program. (1) In order to progress toward achieving the waste reduction target identified in 75-10-803, each state agency, the legislature, and the university system shall:

(a) prepare a source reduction and recycling plan by January 1, 1992, to reduce the solid waste generated by state government. This plan must be submitted to the department and must include, at a minimum, provisions for the composting of yard wastes and the recycling of office and computer paper, cardboard, used motor oil, and other materials produced by the state for which recycling markets exist or may be developed.

(b) establish and implement a source reduction and recycling program by July 1, 1992; and

(c) apply computer technology to reduce the generation of waste paper through:

(i) the use of electronic access systems;

(ii) the transfer of information in electronic rather than paper form; and

(iii) other applications of computer technology.

(2) The plan must be evaluated every 5 years and updated as necessary.

History: En. Sec. 5, Ch. 222, L. 1991; amd. Sec. 4, Ch. 440, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 440 in (1)(c)(i) substituted "electronic access systems" for "electronic bulletin boards".

75-10-806. State government procurement of recycled supplies and materials. (1) The department of administration shall write purchasing specifications that incorporate requirements for the purchase of materials and supplies made from recycled materials if the use is technologically practical and reasonably cost-effective. These requirements must be incorporated into the purchase of:

(a) paper and paper products;

(b) plastic and plastic products;

(c) glass and glass products;

(d) automobile and truck tires;

(e) motor oil and lubricants; and

(f) other materials and supplies as determined by the department of administration.

(2) It is the goal of the state that 95% of the paper and paper products used by state agencies, universities, and the legislature must be made from recycled material that maximizes postconsumer material content.

(3) The state shall, to the maximum extent possible, purchase for use by state agencies paper and paper products that contain postconsumer material rather than new material.

(4) To the extent practical, guidelines for the recycled material content of paper should be consistent with nationwide standards for recycled paper.

(5) The department and the department of administration shall establish a joint recycling market development task force. Task force membership must include but is not limited to representatives of the recycling industry, wholesalers, state agencies, and citizen and environmental organizations, as well as other interested persons. The task force shall:

(a) assist the department of administration in developing purchasing specifications as required in subsection (1);

(b) develop additional mechanisms for state government to develop markets for recycled materials;

(c) identify procurement barriers that discriminate against the purchase of supplies and products that contain recycled material; and

(d) develop recommendations for an informational program designed to educate state employees on how to reduce waste and recycle in the workplace.

History: En. Sec. 6, Ch. 222, L. 1991; amd. Sec. 271, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), at beginning of second sentence, deleted "By January 1, 1992"; and in (2), near beginning, and in (3), at beginning, deleted references to January 1, 1996. Amendment effective March 12, 1997.

75-10-807. Requirement to prepare and implement state solid waste management plan. (1) As a basis for developing an integrated waste management program and ensuring adequate disposal capacity, the department shall prepare and implement a state solid waste management plan in accordance with this part.

(2) The plan must be comprehensive and integrated and must include at least the following elements:

(a) a capacity assurance element that identifies existing disposal capacity, estimates waste generation rates, and determines the disposal capacity needed for the future and that assesses the potential effect of interstate disposal on capacity;

(b) an element that incorporates federal regulations 40 CFR, parts 257 and 258;

(c) an element that identifies the role of each of the components of the integrated waste management priorities contained in 75-10-804 in meeting the solid waste reduction target in 75-10-803;

(d) a technology assessment element that assesses the availability and practicality of alternative technologies for solid waste management;

(e) an education and public information element that identifies existing education and information programs and describes how the state will increase the awareness and cooperation of the public in environmentally safe solid waste management;

(f) a special waste and household hazardous waste element that identifies types and quantities of wastes that create special disposal problems and recommends methods for reducing, handling, collecting, transporting, and disposing of those wastes and that identifies existing and future strategies for managing those wastes;

(g) an element that identifies the needs of rural communities and management strategies to address those needs;

(h) an element that identifies mechanisms to ensure proper training of landfill operators; and

(i) a timeline and implementation strategy for each of the plan elements.

(3) The plan must be developed with the involvement of local officials, citizens, solid waste and recycling industries, environmental organizations, and others involved in the management of solid waste.

(4) The department shall conduct hearings as provided in 75-10-111.

(5) The plan must be evaluated every 5 years and updated as necessary.

History: En. Sec. 7, Ch. 222, L. 1991.

Part 9

Megalandfill Siting Act

Part Cross-References

Solid waste management districts, Title 7, ch. 13, part 2.

Joint solid waste management districts, Title 7, ch. 13, part 3.

Montana Environmental Policy Act, Title 75, ch. 1, parts 1 through 3.

The Montana Solid Waste Management Act, Title 75, ch. 10, part 2.

75-10-901. Short title. Sections 75-10-901 through 75-10-945 may be cited as the "Montana Megalandfill Siting Act".

History: **En. Sec. 1, Ch. 468, L. 1991.**

75-10-902. Purpose. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, due to the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to 75-10-916 and a license to operate acquired pursuant to 75-10-221 and 75-10-933.

History: **En. Sec. 2, Ch. 468, L. 1991.**

75-10-903. Definitions. As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

(7) (a) "Megalandfill" or "facility" means, except as provided in subsection (7)(b), any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts

35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(9) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(10) (a) "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles.

History: En. Sec. 3, Ch. 468, L. 1991; amd. Sec. 1, Ch. 338, L. 1993; amd. Sec. 205, Ch. 418, L. 1995; amd. Secs. 530, 568, Ch. 546, L. 1995.

75-10-904 and 75-10-905 reserved.

75-10-906. Adoption of rules by board. The board may adopt rules implementing the certification provisions of 75-10-901 through 75-10-945, including rules regarding the filing and contents of the application, proof of service and notice requirements, environmental factors to be evaluated, filing fee, hearings process, and other components of the certificate and certification process that the board considers necessary.

History: En. Sec. 4, Ch. 468, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-10-907. Adoption of rules by department. The department may adopt rules implementing the licensing provisions of 75-10-901 through 75-10-945, including rules regarding the contents of the application, monitoring, and other components of the license and licensing process that the department considers necessary.

History: En. Sec. 5, Ch. 468, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-10-908. Contracts for information. (1) The department may contract with a potential applicant under 75-10-901 through 75-10-945 in advance of the filing of a formal application for the development of information or the provision of services by the department required under 75-10-901 through 75-10-945.

(2) Payments made to the department under a contract must be credited against the fee payable under 75-10-921.

History: En. Sec. 6, Ch. 468, L. 1991.

75-10-909. Grants, gifts, and funds. The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under 75-10-901 through 75-10-945.

History: En. Sec. 7, Ch. 468, L. 1991.

75-10-910. Money to solid waste management account. All fees, taxes, fines, and penalties collected under 75-10-901 through 75-10-945, except those collected by a justice's court, must be deposited in the solid waste management account as provided in 75-10-117 for use by the department in carrying out its functions and responsibilities related to solid waste management.

History: En. Sec. 8, Ch. 468, L. 1991.

75-10-911 and 75-10-912 reserved.

75-10-913. Annual long-range plan submitted — contents — available to public. (1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of transportation, the department of fish, wildlife, and parks, the department of commerce, and the

department of natural resources and conservation. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan.

History: En. Sec. 9, Ch. 468, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 206, Ch. 418, L. 1995.

75-10-914. Study of included facilities. If a person identifies a proposed facility in its long-range plan, submitted pursuant to 75-10-913, as one on which construction is proposed within the 2-year period following submission of the plan, the department shall begin to examine and evaluate the proposed site to determine whether construction of the proposed facility would unduly impair the environmental, social, and economic values described in 75-10-920. The study may be continued until a person files an application for a certificate under 75-10-916. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate and a license.

History: En. Sec. 10, Ch. 468, L. 1991.

75-10-915 reserved.

75-10-916. Certificate required. (1) A person may not construct a megalandfill in the state without first applying for and obtaining a certificate of site acceptability from the board.

(2) A certificate may only be issued pursuant to 75-10-916 through 75-10-930.

History: En. Sec. 11, Ch. 468, L. 1991.

75-10-917. Certificate transferable. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained in 75-10-901 through 75-10-945.

History: En. Sec. 12, Ch. 468, L. 1991.

75-10-918. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under 75-10-916 in a form that the board requires, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;

(iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) baseline data for the primary and reasonable alternate locations;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;
(b) department of fish, wildlife, and parks;
(c) department of commerce;
(d) department of transportation; and
(e) department of natural resources and conservation.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application.

History: En. Sec. 13, Ch. 468, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 207, Ch. 418, L. 1995.

75-10-919. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate must be in a form and contain information as the board by rule or the department by order prescribes. Notice of an amendment must be given as provided in 75-10-918(3).

(2) An application may be amended by an applicant any time prior to the report made by the department under 75-10-922. If the proposed amendment prevents the department from carrying out its duties and responsibilities under 75-10-901 through 75-10-945, the department may require additional filing fees as the department determines necessary or may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide details with respect to an item described in the original application. This supplemental material may be submitted without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive.

History: En. Sec. 14, Ch. 468, L. 1991; amd. Sec. 70, Ch. 18, L. 1995.

75-10-920. Environmental, social, and economic factors evaluated during certification. In evaluating applications for a certificate of site acceptability, the department shall give consideration to the following list of factors and regulations, where applicable, and may by rule add to the factors enumerated in this section:

(1) siting criteria for municipal solid waste landfills consistent with federal requirements as described in 40 CFR part 258;

(2) siting criteria described under the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, and rules adopted under that part;

(3) the Montana solid waste management plan;

(4) solid waste disposal needs, including:

(a) availability and desirability of alternative methods of solid waste disposal in lieu of the proposed facility;

(b) promotional activities of the applicant that may have given rise to the need for the facility;

(c) social changes resulting from the facility, including protection of public health and environmental quality; and

(d) integrated waste management activities that could reduce the need for additional solid waste disposal capacity;

(5) land use impacts, including:

(a) the area of land required and its ultimate use;

(b) consistency with state and regional solid waste plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) the impact on the population already in the area and the population attracted by construction or operation of the facility;

(f) the impact of availability of solid waste disposal at the facility on growth patterns and population dispersal;

(g) construction materials and practices, including quality control and quality assurance plans to be followed during construction of all phases of the proposed facility;

(h) scenic impacts;

(i) the effects on natural systems, wildlife, and plant life;

(j) the impacts on important historic, architectural, archaeological, and cultural areas and features;

(k) the impacts on public facilities and accommodations;

(l) opportunities for joint use with solid waste disposal-intensive industries; and

(m) the economic impact on the local area, local government infrastructure, and existing industry;

(6) water resources impacts, including:

(a) hydrologic studies of the adequacy of water supply and the impact of the facility on streamflow, lakes, and reservoirs;

(b) hydrologic studies of the impact of the facility on ground water, including vadose zone studies describing the potential for leachate to migrate from the facility to ground water;

(c) an inventory of effluents, including physical, chemical, and biological characteristics;

(d) hydrologic studies of effects of effluents on receiving waters;

(e) the effect of the facility on water quality;

(f) the facility's projected water uses;

(g) the effects on plant and animal life, including algae, macroinvertebrates, and fish population;

(h) effects on unique or otherwise significant ecosystems, such as wetlands; and

(i) ground water, vadose zone, and methane gas monitoring systems and programs;

(7) characteristics of solid wastes that will be disposed of at the facility, including:

(a) the rate of solid waste disposal;

(b) the solid waste handling practices proposed to be used;

(c) the present and expected future physical and chemical characteristics of the solid waste; and

(d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;

(8) transportation practices, including:

(a) route and mode of transporting waste;

(b) environmental, social, and economic impacts of transportation facilities; and

(c) transfer facilities.

History: En. Sec. 15, Ch. 468, L. 1991.

75-10-921. Filing fee — accountability — refund — use. (1) (a) The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application for a certificate. The filing fee must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945. The initial filing fee may not exceed the following scale based upon the megalandfill's projected annual tonnage of waste:

(i) a base fee of $40,000; plus

(ii) 20 cents per ton for every ton of waste over 200,000 tons for a new or existing megalandfill or facility not subject to 75-10-903(6)(b); or

(iii) 20 cents per ton of waste over 300,000 tons for an existing megalandfill or facility pursuant to 75-10-903(6)(b).

(b) The department may allow a credit against the fee payable under this section for the applicant's costs of developing information or providing services required under 75-10-901 through 75-10-945 or required for preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, part 1, or the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. The applicant may submit the information or a description of the services performed to the department, together with an accounting of the expenses incurred in preparing the information or performing the services. The department shall evaluate the applicability, validity, and usefulness of the data or services and determine the expenses that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that the amount to be credited is necessary to carry out its responsibilities under 75-10-901 through 75-10-945.

(2) (a) The department may contract with an applicant after the filing of a formal application for the development of information or the provision of services required under 75-10-901 through 75-10-945. The contract may continue an agreement entered into pursuant to 75-10-908. Payments made to the department under a contract must be credited against the fee payable under this section. The revenue derived from the filing fee must be sufficient to enable the department and the board to carry out their responsibilities under 75-10-901 through 75-10-945. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and

applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department; however, an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The applicant is entitled to an accounting of money spent and to a refund with interest at the rate of 6% a year of the portion of the filing fee not spent by the department in carrying out its responsibilities under 75-10-901 through 75-10-945. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(4) The revenue derived from the filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out other responsibilities of the department and the board under 75-10-901 through 75-10-945.

History: En. Sec. 16, Ch. 468, L. 1991; amd. Sec. 2, Ch. 338, L. 1993; amd. Sec. 531, Ch. 546, L. 1995.

75-10-922. Study, evaluation, and report on proposed facility. (1) After receipt of an application, the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.

History: En. Sec. 17, Ch. 468, L. 1991.

75-10-923. Voiding of application. An application may be voided by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by 75-10-918 and the rules adopted under 75-10-918; or

(3) failure to deposit the filing fee as provided in 75-10-921.

History: En. Sec. 18, Ch. 468, L. 1991.

75-10-924. Hearing date — location — department to act as staff. (1) Upon receipt of the department's report submitted under 75-10-922, the board shall set a date for a hearing to begin not more than 120 days after receipt of the report. A certification hearing must be conducted by the board in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

(2) Except as provided in 75-10-926, the department shall act as the staff for the board throughout the decisionmaking process and the board may request that the department present testimony or cross-examine witnesses as the board considers necessary and appropriate.

History: En. Sec. 19, Ch. 468, L. 1991; amd. Sec. 3, Ch. 487, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 487 in second sentence in (1), after "board", deleted "in Helena or".

75-10-925. Certificate amendments. (1) Within 30 days after notice of an amendment to a certificate is given as provided in 75-10-919, including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental, social, and economic impacts caused by the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact caused by the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After the hearing, the board shall grant, deny, or modify the amendment with conditions it considers appropriate.

(2) In cases where the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall grant the amendment either as applied for or upon terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

History: En. Sec. 20, Ch. 468, L. 1991.

75-10-926. Hearing examiner — restrictions — duties. (1) The board shall appoint a hearing examiner to conduct certification proceedings under 75-10-901 through 75-10-945. The hearing examiner may not be a member of the board or an employee of the department or the board. A hearing examiner must be appointed within 20 days after the department's report has been filed with the board.

(2) A prehearing conference must be held, following notice, within 60 days after the department's report has been filed with the board.

(3) The prehearing conference must be organized and supervised by the hearing examiner.

(4) The prehearing conference must be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties all direct testimony that they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on must be submitted and served at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery that must be completed before the commencement of the hearing upon good cause shown and under other conditions as the hearing examiner prescribes.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing will proceed, setting forth those criteria listed in 75-10-929 as to which no issue of fact or law has been raised and that are conclusively presumed and are not subject to further proof except for good cause shown, and listing any other special rules to expedite the hearing that the hearing examiner adopts with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this section shall ensure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) to expedite the hearing for

a facility when the department has recommended approval of a facility and no objections have been filed.

History: **En. Sec. 21, Ch. 468, L. 1991.**

75-10-927. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board under 75-10-901 through 75-10-945 may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency entitled to receive service of a copy of the application under 75-10-918;

(c) a person entitled to receive service of a copy of the application under 75-10-918;

(d) a nonprofit organization formed in whole or in part to:

(i) promote conservation or natural beauty;

(ii) protect the environment, personal health, or other biological values;

(iii) preserve historical sites;

(iv) promote consumer interests;

(v) represent commercial and industrial groups; or

(vi) promote the orderly development of the areas in which the facility is to be located; and

(e) any other interested person who establishes an interest in the proceeding.

(2) The department must be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsections (1)(b) through (1)(e).

(4) A party waives the right to be a party if the party does not participate in the hearing before the board.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-10-918 shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent must be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.

History: **En. Sec. 22, Ch. 468, L. 1991.**

75-10-928. Record of hearing — procedure — rules of evidence — burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, that any party wishes the board to consider or that the board itself expects to use or rely upon must be made a part of the record.

(2) A record must be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under 75-10-924, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-10-929 are met.

(4) All proceedings under 75-10-924 through 75-10-928 are governed by the procedures set forth in 75-10-924 through 75-10-928, the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence apply except that the contested case procedures of the Montana Administrative Procedure Act apply if not in conflict with the procedures set forth in 75-10-924 through 75-10-928 or the procedural rules adopted by the board.

History: En. Sec. 23, Ch. 468, L. 1991.

Cross-References

Hearing — rules of evidence, cross-examination, and judicial notice, 2-4-612.

Evidence, Title 26.

75-10-929. Decision of board — findings necessary for certification. (1) Within 90 days after submission of the recommended decision by the department, the board shall make complete findings, issue an opinion, and render a final decision upon the record, either granting or denying the application for a certificate as filed or granting it upon terms, conditions, or modifications of the siting of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it finds and determines:

(a) the nature of the probable environmental impact;

(b) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(c) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(d) that the facility will serve the public interest;

(e) any impacts of the facility according to each of the criteria listed in 75-10-920;

(f) the solid waste disposal needs listed in 75-10-920(4); and

(g) that the applicant has fully mitigated the loss of wildlife habitat, through either onsite or offsite habitat improvements.

(3) In determining that the facility will serve the public interest, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety; and

(e) any other factors that it considers relevant.

History: En. Sec. 24, Ch. 468, L. 1991.

75-10-930. Conditions imposed. If the board determines that the location of all or a part of the proposed megalandfill should be modified, it may condition its certificate upon the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

History: En. Sec. 25, Ch. 468, L. 1991.

75-10-931 and 75-10-932 reserved.

75-10-933. License required. (1) A person may not commence to construct a megalandfill in the state without first applying for and obtaining a license pursuant to 75-10-221. The licensing process must be concurrent with the certification process required in 75-10-916 through 75-10-930.

(2) The department shall make the decision to grant or deny the license within 30 days of the certification decision, as provided in 75-10-929.

(3) Once a license has been issued, a megalandfill may not be constructed, operated, or maintained except in conformity with the license and any terms, conditions, and modifications contained in the license.

History: En. Sec. 26, Ch. 468, L. 1991.

75-10-934. License transferable. A license may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions, and modifications contained in 75-10-901 through 75-10-945.

History: En. Sec. 27, Ch. 468, L. 1991.

75-10-935. Opinion issued with decision — contents. (1) In rendering a decision on an application for a license for a megalandfill, the department shall issue an opinion stating its reasons for the action taken.

(2) In addition to the requirements of 75-10-221, any license issued by the department shall include the following:

(a) an environmental evaluation statement related to the megalandfill being certified. The statement must include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects that cannot be avoided by issuance of the license;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility.

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified megalandfill site between the time of certification and completion of construction; and

(d) a statement signed by the applicant showing agreement to comply with the requirements of 75-10-901 through 75-10-945 and the conditions of the certificate.

History: En. Sec. 28, Ch. 468, L. 1991.

75-10-936 and 75-10-937 reserved.

75-10-938. Monitoring. The department shall monitor the operations of all certificated facilities to ensure continuing compliance with 75-10-901 through 75-10-945 and with certificates issued under 75-10-916 and to discover and prevent noncompliance with 75-10-901 through 75-10-945 or certificates issued under 75-10-916.

History: **En. Sec. 29, Ch. 468, L. 1991.**

75-10-939. Revocation or suspension of license. A license may be revoked or suspended by the department following notice and an opportunity for a hearing before the department for:

(1) any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the department's refusal to grant a license;

(2) failure to comply with the terms or conditions of the certificate; or

(3) violation of any provision of 75-10-901 through 75-10-945, rules adopted under 75-10-901 through 75-10-945, or orders of the department.

History: **En. Sec. 30, Ch. 468, L. 1991.**

75-10-940. Enforcement by residents. (1) A person with knowledge that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that states the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the statements subjects the person to the penalties prescribed for a violation of 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the person may bring an action of mandamus in the district court of the first judicial district of Montana. If the court finds that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform those duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

History: **En. Sec. 31, Ch. 468, L. 1991.**

75-10-941. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedy provided in this section does not exclude the use of any other remedy that may be available under the laws of the state.

History: **En. Sec. 32, Ch. 468, L. 1991.**

75-10-942. Judicial review of department and board of health decisions. (1) An applicant aggrieved by the final decision of the board on an application for a certificate or the final decision of the department on an application for a license may obtain judicial review of that decision by filing a petition in district court.

(2) The judicial review procedure is the same as that for contested cases under Title 2, chapter 4, part 7.

(3) This section does not prohibit the department from holding a hearing on all matters that are not the subject of a pending appeal by the applicant under subsection (1).

History: **En. Sec. 33, Ch. 468, L. 1991.**

75-10-943. Penalties for violation — civil action by attorney general. (1) (a) A person who commences to construct or operate a megalandfill without obtaining a certificate required under 75-10-916 and a license required under 75-10-933, who constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of 75-10-901 through 75-10-945 or any rule or order adopted under 75-10-901 through 75-10-945, or who knowingly submits false information in any report, long-range plan, or application required by 75-10-901 through 75-10-945 is liable for a civil penalty as provided in subsection (2).

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) A person who knowingly violates the provisions of subsection (1) shall be fined not more than $25,000 for each violation or be imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of 75-10-901 through 75-10-945, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce 75-10-901 through 75-10-945 or a certificate issued under 75-10-916. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order must be granted without bond.

(4) The department shall also enforce 75-10-901 through 75-10-945 and may bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945.

History: **En. Sec. 34, Ch. 468, L. 1991.**

75-10-944. Order not stayed by appeal — stay or suspension by court — limitations. An appeal from a department order does not automatically stay or suspend the operation of the order. The court may, upon motion by a party, stay or suspend, in whole or in part, the operation of the department's order on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) A stay may not be granted without notice to the parties and an opportunity to be heard by the court.

(2) A department order may not be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and a stay or suspension must specify the nature of the damage.

History: **En. Sec. 35, Ch. 468, L. 1991.**

75-10-945. Surety bond. If an order of the department is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the department. The cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, the party does not forfeit bond and is not responsible for damages caused by delay.

History: **En. Sec. 36, Ch. 468, L. 1991.**

75-10-946 through 75-10-949 reserved.

75-10-950. Definitions. As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) (a) "Megalandfill" means, except as provided in subsection (4)(b), any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule.

History: **En. Sec. 1, Ch. 541, L. 1991; amd. Sec. 3, Ch. 338, L. 1993; amd. Sec. 208, Ch. 418, L. 1995; amd. Secs. 532, 568, Ch. 546, L. 1995.**

75-10-951. Megalandfill financial assurance — release. (1) As a condition of a license to operate a megalandfill under 75-10-221, an applicant shall provide financial assurance sufficient to ensure the restoration or replacement of any natural resource damaged or impaired as a result of the construction, operation, or closure of the megalandfill. The department shall determine the amount of financial assurance that must be provided based on an assessment of the license application and the applicant's estimated cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the applicant's proposed operations.

(2) The department shall adopt rules to specify the terms and conditions of financial assurance.

(3) To satisfy the financial assurance requirement, the applicant shall file with the department a bond that is payable to the state of Montana with a surety satisfactory to the department, conditioned upon the faithful performance of the requirements of this section and the rules of the department.

(4) The bond approved by the department may not be less than the estimated cost to the state to reclaim, restore, or replace damaged or impaired natural resources.

(5) Every 2 years the department shall evaluate the amount of the bond provided for a licensed megalandfill. If the department determines that the amount of the bond does not represent the present cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the operation, the department may modify the terms and conditions of the bond.

(6) The department may not release an operator from the financial assurance requirement and may not release the bond:

(a) for a minimum of 30 years after the megalandfill has closed;

(b) until the department determines that the natural resources associated with the megalandfill have been permanently reclaimed, restored, or replaced to the quantity and quality that prevailed prior to the commencement of the licensed operations and that the megalandfill presents no significant future threat to those natural resources; and

(c) until a public hearing has been held. The department shall make all information that is relevant to the decision on whether to release an operator from the financial assurance requirement readily available to interested persons, and no less than 45 days prior to the public hearing the department shall:

(i) publish notice of the hearing in newspapers of general statewide circulation and circulation in the county where the megalandfill is located; and

(ii) take other appropriate measures to ensure broad distribution of the hearing notice.

(7) A person may submit to the department information relevant to the department's decision to release an operator from all or any part of the financial assurance requirement for a period of 30 days after the date of the public hearing required under subsection (6).

(8) A person may request the department to reconsider its decision to release an operator from all or any part of the financial assurance requirement based upon information the person submits to show that the licensee has not reclaimed, restored, or replaced the quantity or quality of natural resources that prevailed prior to the commencement of the licensed operations. The department's response to a request to reconsider its decision to release an operator from all or any part of the financial assurance requirement is the final agency decision.

History: En. Sec. 2, Ch. 541, L. 1991.

75-10-952. Bond forfeiture. At the board's discretion, the failure of a licensee to reclaim, restore, or replace damaged or impaired natural resources to the department's satisfaction, as required under 75-10-951(6) or any rule adopted under 75-10-951(6), may result in bond forfeiture.

History: En. Sec. 3, Ch. 541, L. 1991.

75-10-953. Reclamation by board. (1) Pursuant to the provisions of 75-10-950 through 75-10-954, the board may reclaim, restore, or replace any affected natural resources for which a bond has been forfeited.

(2) The board may have reclamation work done by department employees or by employees of other governmental agencies or soil conservation districts or through contracts with qualified persons.

(3) Any funds or any public works programs available to the board may be used and expended to reclaim, restore, or replace natural resources that have been damaged or impaired as a result of the construction, operation, or closure of a megalandfill. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(4) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether a megalandfill has been reclaimed and rehabilitated in accordance with the requirements of 75-10-951(6). Upon request of the board, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

History: En. Sec. 4, Ch. 541, L. 1991.

Cross-References

Mining reclamation, Title 82, ch. 4.

75-10-954. Megalandfill reclamation account — deposit of funds. (1) There is a megalandfill reclamation account in the state special revenue fund provided for in 17-2-102.

(2) All forfeited bonds that have been or will be paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the account.

(3) Money in the account is available to the department for the reclamation, restoration, and replacement of natural resources damaged or impaired by the megalandfill. Unencumbered and unexpended money remaining in the account at the end of a fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

(4) All fees, fines, penalties, and other money paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the state general fund.

History: En. Sec. 5, Ch. 541, L. 1991; amd. Sec. 55, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 in (2), at beginning after "All", deleted "fees, fines, penalties" and after "bonds" deleted "and other money"; and inserted (4) relating to deposit in general fund of all fees, fines, penalties, and other money. Amendment effective July 1, 1997.

Part 10

Infectious Waste Management Act

Part Cross-References

Report of unprotected exposure to disease, 50-16-702.

75-10-1001. Short title. This part may be cited as the "Infectious Waste Management Act".

History: En. Sec. 1, Ch. 483, L. 1991.

75-10-1002. Purpose. The purpose of this part is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable.

History: En. Sec. 2, Ch. 483, L. 1991.

75-10-1003. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of environmental quality established in 2-15-3501.

(2) "Generator" means an individual, firm, facility, or company that produces infectious waste.

(3) "Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:

(a) virulence, which is the ability of microorganisms to cause disease;

(b) dose, which is microorganisms in a quantity sufficient to cause infection;

(c) portal of entry, which is an opening or route of access into a human body; and

(d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.

(4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:

(a) cultures and stocks of infectious agents and associated biologicals;

(b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;

(c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and

(d) sharps that have been used in patient care, medical research, or industrial laboratories.

(5) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to needles, scalpel blades, and broken glass that may be contaminated with blood.

(6) "Steam sterilization" means a treatment method for infectious waste using saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.

(7) "Storage" means the actual or intended containment of wastes on either a temporary basis or a long-term basis.

(8) "Transportation" means the movement of infectious waste from the point of generation to any intermediate points or to the point of ultimate treatment or disposal.

(9) "Treatment" means the application of a method, technique, or process, including incineration, designed to render infectious waste sterile.

History: En. Sec. 3, Ch. 483, L. 1991; amd. Sec. 209, Ch. 418, L. 1995.

75-10-1004. Prohibition. A person may not treat, store, transport, or dispose of infectious waste in a manner not authorized under the provisions of this part or rules adopted under the provisions of this part.

History: **En. Sec. 4, Ch. 483, L. 1991.**

75-10-1005. Management standards — procedures for storage, transportation, treatment, and disposal. (1) Infectious waste must be separated from ordinary waste at the point of origin and stored until the waste is rendered noninfectious in separate, distinct containers with biohazard warning labels in compliance with the following procedures:

(a) Sharps must be contained for storage, transportation, treatment, and subsequent disposal in leakproof, rigid, puncture-resistant containers that must be taped closed or capped securely to prevent loss of contents.

(b) Infectious waste other than sharps must be contained in moisture-proof disposable containers or bags of a strength sufficient to prevent ripping, tearing, or bursting under normal conditions of use. The bags must be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage, handling, and transportation.

(2) To inhibit the spread of infectious agents, infectious waste must be stored prior to treatment in a secured area that prevents access by unauthorized personnel and must be clearly marked or labeled as infectious.

(3) Handling of infectious waste must be done in a manner to prevent compaction or other mechanical manipulation that might cause the release of infectious agents.

(4) (a) Treatment and disposal of infectious waste must be accomplished through the following methods:

(i) incineration with complete combustion that reduces infectious waste to carbonized or mineralized ash;

(ii) steam sterilization that renders infectious waste noninfectious; or

(iii) sterilization by standard chemical techniques or by any scientifically proven techniques approved by state and federal authorities.

(b) Liquid or semisolid infectious waste may be discharged into a sewer system that provides secondary treatment or into a primary treatment sewage system if waste is first sterilized by chemical treatment. A subsurface disposal system installed and operated in accordance with state or local sanitary regulations is, for the purpose of this subsection (b), a sewer system providing secondary treatment.

(c) Fetal remains or recognizable body parts other than teeth must be disposed of by incineration or interment.

(5) If infectious waste has been rendered noninfectious by one of the methods listed in subsection (4) and is no longer biologically hazardous, it may be mixed with and disposed of with ordinary waste in the following manner:

(a) Steam-sterilized waste must be labeled identifying it as such with heat sensitive tape or bagged in marked autoclavable bags.

(b) Chemically treated waste or waste otherwise treated under subsection (4)(a)(iii) must be appropriately labeled.

(6) Infectious waste may be transported by the generator, a municipal solid waste service, or a regulated commercial hauler to an offsite treatment facility if the waste is confined in a leakproof, noncompacting, fully enclosed vehicle compartment.

(7) (a) Infectious waste that has been treated by one of the methods in subsection (4) may be disposed of in a properly operated landfill licensed under 75-10-221.

(b) Untreated infectious waste may be disposed of at a licensed, properly operated landfill until April 1, 1993, if it is buried in a separate area without compaction and with minimum disturbance.

(8) An employee who handles or manages infectious waste must receive training provided by the employer that is adequate to ensure safe performance of duties.

(9) Generators and transporters of infectious waste shall develop a contingency plan to handle spills and equipment failure.

History: **En. Sec. 5, Ch. 483, L. 1991.**

75-10-1006. Licensing and regulation — rulemaking authority. (1) A board or department of the state that licenses a profession, occupation, or health care facility that generates infectious waste shall require each licensee to comply with this part as a condition of licensure. The board or department shall adopt rules to implement this part and may impose and adjust annual fees commensurate with the costs of regulation.

(2) A profession, occupation, or health care facility that generates or transports infectious waste or that operates treatment, storage, or disposal facilities regulated by this part that is not already licensed by a board or department under subsection (1) must obtain a permit annually from the department. The department shall adopt rules to implement this part and may establish an annual fee commensurate with the costs of regulation. Fees collected under the provisions of this part must be deposited in the solid waste management account established in 75-10-117.

History: **En. Sec. 6, Ch. 483, L. 1991.**

Part 11

Notice of Motor Oil Recycling Center

75-10-1101. Waste oil notice. (1) Each retailer and wholesaler offering motor oil for sale shall visibly display at an appropriate location within the retail store or wholesale outlet a sign indicating the location of the nearest waste oil recycling collection center if the center is within 25 miles of the retailer or wholesaler.

(2) The department of environmental quality shall design an oil recycling sign to be used by retailers and wholesalers. The department may establish the specifications for the sign by rule.

History: **En. Sec. 1, Ch. 623, L. 1991; amd. Sec. 210, Ch. 418, L. 1995.**

CHAPTER 11

UNDERGROUND STORAGE TANKS

Part 1 reserved

Part 2 — Licensing of Underground Storage Tank Installers

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75-11-202. Findings and purpose.
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Part 4 reserved

Part 5 — Montana Underground Storage Tank Act

75-11-501. Short title.
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75-11-511. Regulated substance inventory.
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75-11-525. Administrative penalties for violations — appeals — venue for hearings.
75-11-526. Underground storage tank special revenue account.

Part 1 reserved

Part 2

Licensing of Underground Storage Tank Installers

Part Cross-References

Hazardous waste management, Title 75, ch. 10, part 4.

75-11-201. Short title. This part may be cited as the "Montana Underground Storage Tank Installer Licensing and Permitting Act".

History: En. Sec. 1, Ch. 594, L. 1989.

75-11-202. Findings and purpose. (1) Leaking underground storage tank systems have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation or closure requires specialized knowledge, training, and experience.

(2) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to assess fees to support state and local administration of permitting, licensing, and inspection activities.

History: En. Sec. 2, Ch. 594, L. 1989; amd. Sec. 1, Ch. 200, L. 1993.

75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement,

backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(5) "Installer" means an individual who installs or closes underground storage tank systems.

(6) "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

(7) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(9) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in 75-11-503.

(12) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-11-503, and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system.

History: En. Sec. 3, Ch. 594, L. 1989; amd. Sec. 2, Ch. 200, L. 1993; amd. Sec. 211, Ch. 418, L. 1995; amd. Secs. 533, 568, Ch. 546, L. 1995; amd. Sec. 32, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 in definitions of regulated substance and underground storage tank substituted "75-11-503" for "75-10-403".

75-11-204. Rulemaking authority. The department may adopt rules governing the installation and closure of underground storage tank systems. Rules may include but are not limited to the following:

(1) the requirements for issuance, denial, renewal, modification, suspension, and revocation of permits for the installation and closure of underground storage tank systems;

(2) the requirements for issuance, denial, renewal, modification, suspension, and revocation of licenses for underground storage tank system installers;

(3) the requirements for examination and training of underground storage tank system installers;

(4) the requirements for qualifications of inspectors, use of inspectors, and methods for conducting an inspection;

(5) a schedule of fees for obtaining licenses and license renewals by underground storage tank system installers;

(6) a schedule of fees for the review of applications for underground storage tank system permits;

(7) a schedule of fees for inspection of installations or closures; and

(8) the mechanism for remittance of inspection or permitting fees to local governments.

History: En. Sec. 4, Ch. 594, L. 1989; amd. Sec. 3, Ch. 200, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-11-205 through 75-11-208 reserved.

75-11-209. Permits — requirement for licensed installer. (1) A person may not install or close, or cause to be installed or closed, an underground storage tank system without a permit issued by the department as provided in 75-11-212.

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank system unless the installation or closure is inspected by a department inspector or a designated local inspector as provided in 75-11-213.

History: En. Sec. 5, Ch. 594, L. 1989; amd. Sec. 4, Ch. 200, L. 1993; amd. Sec. 2, Ch. 641, L. 1993; amd. Sec. 2, Ch. 568, L. 1995.

75-11-210. Licensing — interim licenses — regular licenses. (1) An installer may not install or close an underground storage tank system unless that person has a valid license issued by the department.

(2) The department shall grant an installer a regular license if the installer demonstrates competency and experience in the installation and closure of underground storage tank systems, passes a written examination conducted by the department, and pays the license fee established by department rule.

(3) The department shall conduct written examinations for the purpose of qualifying individuals to receive an underground storage tank system installer license. The department shall determine the times and locations of the examinations and shall provide public notice of the examinations.

(4) An underground storage tank system installer license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

(5) As a condition of renewal, the department may require that an installer demonstrate continuing competency in the installation and closure of tank systems.

(6) An installer need not be a Montana resident to qualify for a license.

History: En. Sec. 6, Ch. 594, L. 1989; amd. Sec. 5, Ch. 200, L. 1993.

75-11-211. Denial, modification, suspension, or revocation of license — grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the installer:

(a) fails to achieve a passing grade on a written examination;

(b) fails to pay a license fee;

(c) commits fraud or deceit with respect to the license application;

(d) has had a similar license suspended or revoked in another state or territory; or

(e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank system.

(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The installer may request a hearing before the board. If the board grants a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 594, L. 1989; amd. Sec. 6, Ch. 200, L. 1993.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

75-11-212. Permits — application procedure — issuance. (1) Before the installation or closure of an underground storage tank system, the owner or operator or the owner's or operator's designated licensed underground storage tank installer or remover shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the underground storage tank system installation or closure;

(b) the location of the underground storage tank system installation or closure;

(c) the type of construction of the underground storage tank system;

(d) the contents of the underground storage tank system being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank system or, if the owner or operator is not going to have the underground storage tank system installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under 75-11-204(1), the department shall issue the permit.

History: En. Sec. 8, Ch. 594, L. 1989; amd. Sec. 7, Ch. 200, L. 1993; amd. Sec. 3, Ch. 641, L. 1993.

75-11-213. Inspection of installations and closures — fee. (1) After being issued a permit, an owner or operator may obtain an inspection by the department in lieu of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the department of the date and location of the underground storage tank system installation or closure and shall establish with the department the time when an inspection may be conducted.

(2) An owner or operator may conduct an installation or closure under this section only if an inspector is present.

(3) An inspection fee must be paid by the owner or operator to the department to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.

(4) Department officials or local government officers, such as local health officers, sanitarians, local fire chiefs, or other persons designated or hired by the department, shall conduct inspections on behalf of the department.

(5) The department shall pay the person conducting an inspection on the department's behalf, as provided in subsection (4), from the underground storage tank system license and permit account established in 75-11-227 up to 80% of any fee collected by the department for the inspection. When an inspection is conducted by an officer of a county or city, the payment must be made by the department to the appropriate county or city treasurer. A county or city shall use payments received under this section only for costs incurred in conducting inspections under this section.

(6) A copy of an installation inspection report must be kept on file by the owner or operator for as long as the department may require by rule. A copy of a closure inspection report must be kept by the owner or operator for 3 years after the date of closure.

(7) The department may enter and inspect the premises or any appurtenant property of an owner or operator at any time to ensure compliance with laws or rules pertaining to underground storage tank systems.

History: En. Sec. 9, Ch. 594, L. 1989; amd. Sec. 8, Ch. 200, L. 1993.

75-11-214 and 75-11-215 reserved.

75-11-216. Terminated. Sec. 7, Ch. 568, L. 1995.

History: En. Sec. 3, Ch. 568, L. 1995.

75-11-217. Repealed. Sec. 4, Ch. 568, L. 1995.

History: En. Sec. 10, Ch. 594, L. 1989; amd. Sec. 9, Ch. 200, L. 1993.

75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation or closure or an order to take necessary corrective action within a reasonable time as stated in the order. The notice and order may be signed and served by a department inspector if it is personally given to the person or to the person's agent. Every other notice and order must be signed by the director of the department or the director's deputy and must be served by certified mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If,

after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means.

History: En. Sec. 11, Ch. 594, L. 1989; amd. Sec. 10, Ch. 200, L. 1993.

75-11-219. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in unauthorized activity that is endangering public health or causing damage to the environment;

(2) enjoin a violation of this part, a rule adopted under this part, or an order of the department or the board; or

(3) require compliance with this part, a rule adopted under this part, or an order of the department or the board.

History: En. Sec. 12, Ch. 594, L. 1989.

75-11-220. Imminent hazard. Upon receipt of evidence that the installation or closure of an underground storage tank system may present an imminent and substantial danger to public health or the environment, the department may commence administrative or judicial proceedings to immediately abate the danger or to restrain, order, or enjoin any person from causing the danger. The department may take other judicial or administrative action as may be necessary.

History: En. Sec. 13, Ch. 594, L. 1989; amd. Sec. 11, Ch. 200, L. 1993.

Cross-References

Injunctions, Title 27, ch. 19.

75-11-221 and 75-11-222 reserved.

75-11-223. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed $10,000 per violation. If an installer who is an employee is in violation, the employer of that installer is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224.

History: **En. Sec. 14, Ch. 594, L. 1989; amd. Sec. 1, Ch. 433, L. 1991.**

Cross-References

Injunctions, Title 27, ch. 19.

75-11-224. Criminal penalties. (1) Any owner or operator who knowingly installs or closes an underground storage tank system without a permit and either an inspection or the use of the services of a licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground storage tank system without being licensed; or any person who knowingly makes any false statements or representations in any application, permit, report, licensing form, or other document filed or maintained as required by this part or required by rules adopted under this part is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy.

History: **En. Sec. 15, Ch. 594, L. 1989; amd. Sec. 12, Ch. 200, L. 1993.**

Cross-References

Injunctions, Title 27, ch. 19.

75-11-225. Compliance with other laws — limitation on local ordinances. (1) Nothing in this part limits or alters the responsibility of an owner, operator, or installer to comply with all other state laws or rules.

(2) Ordinances adopted by local government units requiring installation or closure permits or licensed installers, or both, may be no less stringent than the requirements of this part.

History: **En. Sec. 16, Ch. 594, L. 1989.**

75-11-226. Application of other law. (1) The provisions of this part and rules adopted under this part govern if they conflict with other provisions of Montana law or any action taken by the department under the other provisions of law.

(2) The remedies provided for in this part are cumulative with other remedies provided by law.

History: **En. Sec. 17, Ch. 594, L. 1989.**

75-11-227. Underground storage tank license and permit account. (1) There is an underground storage tank license and permit account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the account:

(a) revenues from permit, license, and inspection fees collected under this part; and

(b) revenues from penalties or damages collected under this part.

(3) Appropriations may be made from the underground storage tank license and permit account only for the administration of the underground storage tank program.

History: En. Sec. 18, Ch. 594, L. 1989.

75-11-228 through 75-11-230 reserved.

75-11-231. Terminated. Sec. 6, Ch. 641, L. 1993.

History: En. Sec. 1, Ch. 641, L. 1993.

75-11-232. Closure of tanks under section 1, Chapter 641, Laws of 1993. (1) The department shall indicate in all relevant files that an underground storage tank removed from the ground or closed in-place in accordance with section 1, Chapter 641, Laws of 1993, is determined fully and finally closed by the department.

(2) Underground storage tank systems determined closed under this section are exempt from environmental review by the department unless the department receives substantial evidence of a release that poses a current or potential threat to human health or the environment.

History: En. Sec. 1, Ch. 505, L. 1995.

Part 3
Petroleum Storage Tank Cleanup

Part Cross-References

Petroleum Tank Release Compensation Board, 2-15-2108.

Hazardous waste management, Title 75, ch. 10, part 4.

75-11-301. Findings and purposes. (1) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(2) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(3) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(4) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution. The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.

(5) The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks;

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks; and

(d) provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases.

History: En. Sec. 1, Ch. 528, L. 1989; amd. Sec. 1, Ch. 763, L. 1991; amd. Sec. 1, Ch. 339, L. 1993.

75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) “Double-walled tank system” means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) “Eligible costs” means expenses reimbursable under 75-11-307.

(11) “Export” means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) “Exporter” means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) “Fee” means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) “Fund” means the petroleum tank release cleanup fund established in 75-11-313.

(15) “Gasoline” means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) “Heating oil” means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) “Import” means to receive into a person’s possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) “Operator” means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) “Owner” means a person who holds title to, controls, or possesses an interest in a petroleum storage tank.

(b) The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) “Person” means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) “Petroleum” or “petroleum products” means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend,

such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center.

History: En. Sec. 2, Ch. 528, L. 1989; amd. Sec. 1, Ch. 389, L. 1991; amd. Sec. 2, Ch. 763, L. 1991; amd. Sec. 1, Ch. 298, L. 1993; amd. Sec. 2, Ch. 339, L. 1993; amd. Sec. 212, Ch. 418, L. 1995; amd. Sec. 33, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 in definition of petroleum storage tank, in (a), substituted "75-11-503" for "75-10-403".

75-11-303 through 75-11-306 reserved.

75-11-307. Reimbursement for expenses caused by a release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan except if the corrective action plan addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4); and

(h) expenses for work completed by or on behalf of the owner or operator more than 2 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage.

(3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board.

History: En. Sec. 3, Ch. 528, L. 1989; amd. Sec. 2, Ch. 389, L. 1991; amd. Sec. 3, Ch. 763, L. 1991; amd. Sec. 3, Ch. 339, L. 1993; amd. Sec. 2, Ch. 55, L. 1995; amd. Sec. 2, Ch. 115, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 115 in (1)(a), after "costs", inserted remainder of subsection concerning corrective action plan; in (1)(b) inserted second sentence concerning corrective action plan; and made minor changes in style. Amendment effective July 1, 1997.

75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989;

(b) the department is notified of the release in the manner and within the time provided by law or rule;

(c) the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;

(d) the release was an accidental release; and

(e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad;

(d) a tank belonging to the federal government;

(e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

History: En. Sec. 4, Ch. 528, L. 1989; amd. Sec. 3, Ch. 389, L. 1991; amd. Sec. 4, Ch. 763, L. 1991; amd. Sec. 4, Ch. 339, L. 1993.

75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(c) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(c) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(d) The department shall notify the owner or operator and the board of its approval of a corrective action plan.

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(f) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board. The board shall forward each claim and appropriate documentation to the department. The department shall notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given to the board.

(g) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed to have originated from a double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered;

(ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations.

(2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section.

(3) If an owner or operator disagrees with a board determination under subsection (2), the owner or operator may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(4) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(5) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee.

History: En. Sec. 5, Ch. 528, L. 1989; amd. Sec. 4, Ch. 389, L. 1991; amd. Sec. 5, Ch. 339, L. 1993; amd. Sec. 1, Ch. 355, L. 1993; amd. Sec. 34, Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 near end of second sentence of (1)(e) deleted reference to Title 75, chapter 10, part 4, and inserted reference to Title 75, chapter 11, part 5; and made minor changes in style.

75-11-310 through 75-11-312 reserved.

75-11-313. Petroleum tank release cleanup fund. (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature;

(d) money loaned to the board by the board of investments; and

(e) all interest earned on money in the fund.

(3) The fund may be used only:

(a) to administer this part, including payment of board and department expenses associated with administration;

(b) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

(c) for repayment of any advance and any loan made pursuant to 17-6-225, plus interest earned on the advance or loan.

(4) Whenever the board accepts a loan from the board of investments pursuant to 17-6-225, the receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year.

History: En. Sec. 6, Ch. 528, L. 1989; amd. Sec. 1, Ch. 543, L. 1993; amd. Sec. 272, Ch. 42, L. 1997; amd. Sec. 3, Ch. 115, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 deleted (4) that read: "(4)(a) The legislature may appropriate to the fund repayable advances as necessary to carry out the purposes of this part. The outstanding total of repayable advances may not exceed the amount the board estimates will be received by the fund from the petroleum storage tank cleanup fee during the next 24 months.

(b) Advances to the fund must be repaid and interest earned on advances must be paid to the general fund when determined appropriate by the board. However, all advances to the fund plus the interest earned must be repaid on or before December 31, 1995." Amendment effective March 12, 1997.

Chapter 115 inserted (2)(d) concerning loans from Board of Investments; in (3)(c), after "(4)", inserted "and any loan made pursuant to 17-6-225" and at end inserted "or loan"; at end of (4)(b) substituted "by the board within 24 months of receipt of the advance" for "on or before December 31, 1995" (voided by Ch. 42 amendment); inserted (4) concerning loans from Board of Investments; and made minor changes in style. Amendment effective July 1, 1997.

Code Commissioner Correction: Pursuant to sec. 314, Ch. 42, L. 1997, in (3)(c), after "advance", the Code Commissioner deleted "made under subsection (4)" to eliminate the reference to subsection (4) that was deleted by sec. 272, Ch. 42, L. 1997.

75-11-314. Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;

(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;

(c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;

(d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and

(e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds $8 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than $4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds $8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-203, 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee.

History: En. Sec. 7, Ch. 528, L. 1989; amd. Sec. 2, Ch. 298, L. 1993.

75-11-315. Nonimpairment by state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement between the board and the board of investments by repealing the petroleum storage tank cleanup fee imposed by 75-11-314 or by reducing it below the amount necessary to make annual loan payments.

History: En. Sec. 5, Ch. 115, L. 1997.

Compiler's Comments

Effective Date: Section 7, Ch. 115, L. 1997, provided: "[This act] is effective July 1, 1997."

75-11-316 and 75-11-317 reserved.

75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business as may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board may hire staff, and the department shall provide staff support to the board as the department determines it is able. The board shall use the fund to pay its staff expenses, to pay for department staff used for the review or preparation of corrective action plans and for the oversight of corrective action undertaken by owners and operators for the purposes of this part, and to pay for department of transportation staff used for the collection of the petroleum storage tank cleanup fee.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part; and

(e) other rules necessary for the administration of this part.

(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225.

History: En. Sec. 9, Ch. 528, L. 1989; amd. Sec. 5, Ch. 763, L. 1991; amd. Sec. 4, Ch. 115, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 115 inserted (6) concerning loans from Board of Investments. Amendment effective July 1, 1997.

75-11-319. Rulemaking authority — department and department of transportation. (1) The department may adopt rules necessary to administer its responsibilities under this part, including requirements for approval of corrective action plans.

(2) The department of transportation shall adopt rules governing the collection of the petroleum storage tank cleanup fee. The rules may include, at a minimum, reporting and recordkeeping requirements, method and timing of payment, and examination of records. The rules must be generally consistent

with procedures governing the collection of the gasoline license tax provided for in Title 15, chapter 70.

History: En. Sec. 10, Ch. 528, L. 1989.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-11-320. Other authorities unaffected. Payment of reimbursement, approval of a corrective action plan, or other action of the department or the board under this part does not affect the authority of the department or any other state agency to pursue an action authorized by Title 75, chapter 10, parts 4 or 7, or any other law or rule that applies to releases from petroleum storage tanks.

History: En. Sec. 11, Ch. 528, L. 1989.

75-11-321. Criminal penalties. A person who knowingly misrepresents the date of discovery of a release, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or representation in seeking or assisting a person to seek reimbursement under this part is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted of a second or subsequent violation of this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both.

History: En. Sec. 12, Ch. 528, L. 1989.

Part 4 reserved

Part 5

Montana Underground Storage Tank Act

75-11-501. Short title. This part shall be known and may be cited as the "Montana Underground Storage Tank Act".

History: En. Sec. 1, Ch. 112, L. 1997.

75-11-502. Findings and purpose. The legislature finds that petroleum products and hazardous substances stored in underground tanks are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under this part. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in this part and other appropriate authority provided by law to remedy violations of requirements established under this part.

History: En. Sec. 2, Ch. 112, L. 1997.

75-11-503. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(5) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

(6) "Storage" means the actual or intended containment of regulated substances, either on a temporary basis or for a period of years.

(7) "Underground storage tank":

(a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or (7)(b)(v)(B), if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix); or

(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to facility-wide corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended.

History: En. Sec. 3, Ch. 112, L. 1997; amd. Sec. 2, Ch. 156, L. 1997.

Compiler's Comments

1997 Amendment — Coordination: Pursuant to sec. 2, Ch. 156, L. 1997, a coordination section, inserted in definition of underground storage tank, in (b), subsection (xii) relating to underground pipes connected to an aboveground storage tank.

75-11-504. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) accept and administer grants from the federal government and from other sources, public and private; and

(c) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any regulated substance.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication.

History: En. Sec. 4, Ch. 112, L. 1997.

75-11-505. Administrative rules. The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) standards for design, construction, installation, and closure;

(5) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program;

(6) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(7) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

History: En. Sec. 5, Ch. 112, L. 1997.

75-11-506 through 75-11-509 reserved.

75-11-510. Underground storage tank leak report — inspections — sampling. (1) If an owner or operator of an underground storage tank discovers or is provided with evidence that a tank may have leaked, the owner or operator shall immediately notify the department that a leak may exist.

(2) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

(i) regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part; or

(ii) records pertinent to the regulated substances activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the regulated substances for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(3) In the course of an inspection under this section, the employee or agent of the department may take samples of any regulated substance or suspected regulated substance, including samples from any soil or ground water. If the employee or agent of the department takes a sample of any regulated substance or suspected regulated substance, the employee or agent shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.

History: **En. Sec. 6, Ch. 112, L. 1997.**

75-11-511. Regulated substance inventory. (1) The department is authorized to conduct an inventory of sites and locations in the state where regulated substances have been stored or disposed of at any time.

(2) If the department determines that the presence of a regulated substance or the release of the regulated substance may present a substantial hazard to the public health or to the environment, it may issue an order requiring the owner or operator of the site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) An order issued under subsection (2) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(4) If the department determines that the owner or operator referred to in subsection (2) is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct the activities.

(5) For the purposes of carrying out this section, the department may exercise the powers set forth in 75-11-510.

History: **En. Sec. 7, Ch. 112, L. 1997.**

75-11-512. Administrative enforcement. (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on the public health and welfare or the environment;

(b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or

(c) assess administrative penalties and issue corrective action orders under 75-11-525.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: En. Sec. 8, Ch. 112, L. 1997.

75-11-513. Injunctions. The department may institute and maintain, in the name of the state, actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in any unauthorized activity that is endangering or causing damage to the public health or to the environment;

(2) enjoin a violation of this part, a rule adopted under this part, or an order of the department or the board; or

(3) require compliance with this part, a rule adopted under this part, or an order of the department or the board.

History: En. Sec. 9, Ch. 112, L. 1997.

75-11-514. Imminent hazard. Upon receipt of evidence that the storage or disposal of any regulated substance may present an imminent and substantial danger to the public health or to the environment, the department may commence legal proceedings to immediately restrain or enjoin any person who has contributed to or who is contributing to the storage or disposal from engaging in these activities or order the person to take other action as may be necessary, or both. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect the public health and the environment.

History: En. Sec. 10, Ch. 112, L. 1997.

75-11-515. Cleanup orders. The department may issue a cleanup order to any person who has discharged, deposited, or spilled any regulated substance into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any regulated substance into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance. The order must direct the person to clean up and remove the regulated substance, to treat the regulated substance, or to take other actions as may be considered reasonable by the department.

History: En. Sec. 11, Ch. 112, L. 1997.

75-11-516. Civil penalties. (1) A person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed $10,000 for each violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, or orders of the department or the board.

(4) Money collected under this section must be deposited in the state general fund.

History: En. Sec. 12, Ch. 112, L. 1997.

75-11-517 reserved.

History: En. Sec. 13, Ch. 112, L. 1997.

75-11-518. Venue for legal actions. All legal actions affecting underground storage tanks or the disposal of regulated substances must be brought in the county in which the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial district, Lewis and Clark County.

History: En. Sec. 14, Ch. 112, L. 1997.

75-11-519 reserved.

75-11-520. Construction in event of conflict. The provisions of this part and rules promulgated pursuant to this part govern if they conflict with other provisions of Montana law or any action taken by the department under those provisions.

History: En. Sec. 15, Ch. 112, L. 1997.

75-11-521 through 75-11-524 reserved.

75-11-525. Administrative penalties for violations — appeals — venue for hearings. (1) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed $500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this chapter.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the amount of the administrative penalty assessed under this section;

(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;

(e) the nature of any corrective action that the department requires, whether or not a portion of the penalty is to be suspended;

(f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;

(g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and

(h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the alleged violation occurred. This subsection does not apply until the department gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision allegedly violated;

(b) the facts that constitute the alleged violation;

(c) the specific nature of any corrective action that the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and

(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for

violations, the department shall consider the gravity of the violations and the potential for significant harm to the public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under this chapter.

(6) Action under this section does not bar action under this chapter or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the state general fund.

History: En. Sec. 3, Ch. 281, L. 1993; amd. Sec. 29, Ch. 112, L. 1997; Sec. 75-10-423, MCA 1995; redes. 75-11-525 by Sec. 36(2), Ch. 112, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 112 in first sentence of (1), in two places before "provisions" and before "rules", deleted "underground storage tank" and in two places substituted "this part" for "this chapter" and in fifth sentence, after "authorized by", deleted "Title 75, chapter 11, or by"; near end of (5) and near beginning of (6), after "under", deleted "Title 75, chapter 11, or"; and made minor changes in style.

75-11-526. Underground storage tank special revenue account. (1) There is an underground storage tank account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) revenues from underground storage tank permit and notification fees; and

(b) corrective action costs, damages, and penalties recovered under section 9003 of the federal Resource Conservation and Recovery Act of 1976, as amended.

(2) Appropriations may be made from the underground storage tank account for the following purposes only:

(a) state and local government costs of implementing the underground storage tank leak prevention program;

(b) state and local government costs relating to the investigation of leaking underground storage tanks; or

(c) state costs relating to the administration of the administrative penalty program.

History: En. Sec. 10, Ch. 384, L. 1989; amd. Sec. 4, Ch. 281, L. 1993; Sec. 75-10-447, MCA 1995; redes. 75-11-526 by Sec. 36(2), Ch. 112, L. 1997.

CHAPTERS 12 THROUGH 14

RESERVED

CHAPTER 15

LANDSCAPE MANAGEMENT

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75-15-215. Restrictions as to location.
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75-15-221. Repealed.
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75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills.

Chapter Cross-References

City-County Planning Boards, Title 76, ch. 1, part 1.

Planning and zoning, Title 76, ch. 2.

County land planning assistance, 90-1-108.

Part 1

Outdoor Advertising

Part Cross-References

Beauty of state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

75-15-101. Short title. This part may be cited as the "Outdoor Advertising Act".

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(b).

75-15-102. Policy. The legislature finds and declares that in order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within this state and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right-of-way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this part and the rules promulgated by the commission pursuant thereto. It is the intention of the legislature in this part to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by congress in Title 23, United States Code, "Highways".

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(a).

75-15-103. Definitions. As used in this part, the following definitions apply:

(1) "Commercial or industrial activities" means for purposes of subsection (14) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities are considered commercial or industrial:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence;

(e) railroad tracks and minor sidings;

(f) activities more than 660 feet from the nearest edge of the right-of-way.

(2) "Commercial or industrial zone" means an area that is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances, regulations, or enabling state legislation, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to 76-2-206 are not covered by this definition.

(3) "Commission" means the transportation commission of Montana.

(4) "Department" means the department of transportation.

(5) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing other information that the commission may consider desirable.

(6) "Interchange" or "intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, including the deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(7) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(8) "Maintain" means to allow to exist, subject to the provisions of this part.

(9) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use.

(10) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure that is designed, intended, or used to advertise or inform and that is visible from any place on the main-traveled way of the interstate or primary systems.

(11) "Primary system" means that portion of connected main highways as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(12) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way, by or under public supervision or control, for the convenience of the traveling public.

(13) "Secretary" means the secretary of the United States department of transportation.

(14) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance that is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities.

(15) "Urban area" means an urbanized area or place, as designated by the United States bureau of the census, that has a population of 5,000 or more and that is within boundaries fixed by the department. The boundaries must at a minimum encompass the entire urban place designated by the bureau of the census.

(16) "Visible" means capable of being seen and legible without visual aid by a person of normal visual acuity.

History: (1) thru (3), (5) thru (16)En. Sec. 2, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 89, L. 1974; amd. Sec. 1, Ch. 216, L. 1975; (4)En. by Code Commissioner, 1979; R.C.M. 1947, 32-4716; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 75, L. 1995; amd. Sec. 1, Ch. 510, L. 1995.

Cross-References

General provisions — Transportation Commission, Title 60, ch. 2, part 1.

General provisions — Department of Transportation, Title 60, ch. 2, part 2.

75-15-104. More restrictive regulations preserved. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: En. Sec. 11, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4725.

75-15-105. Relaxation of regulations if federal law changed. In the event the general requirements of Title 23, United States Code, "Highways", or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then the commission shall amend or change the rules that it may have adopted to come into conformity with the federal law, rule, and regulation.

History: En. Sec. 12, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4726; amd. Sec. 2, Ch. 510, L. 1995.

75-15-106 through 75-15-110 reserved.

75-15-111. Outdoor advertising prohibited in proximity to highway — exceptions. (1) Outdoor advertising may not be erected or maintained that is within 660 feet of the nearest edge of the right-of-way and that is visible from any place on the main-traveled way of an interstate or primary system, except:

(a) directional and other official signs and notices, which signs and notices include but are not limited to signs and notices pertaining to natural wonders and scenic and historical attractions, as authorized or required by law;

(b) signs, displays, and devices advertising the sale or lease of property upon which they are located;

(c) signs, displays, and devices advertising activities conducted on the property upon which they are located;

(d) signs, displays, and devices located in areas that are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas must be determined from actual land uses and by agreement between the department and the secretary and defined by rules adopted by the commission. The exception granted by this subsection is limited to two signs and may not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months.

(f) signs or displays advertising the cultural exhibits of nonprofit historical or arts organizations if the signs or displays conform with the standards provided in Title 23, Code of Federal Regulations, section 750, subpart B; or

(g) signs that are consistent with the policy of this state and with the national policy set forth in 23 U.S.C. 131 and the regulations promulgated under 23 U.S.C. 131 and that are designed to provide information in the specific interest of the traveling public as provided in 60-5-504, 60-5-505, 60-5-511 through 60-5-513, and 60-5-519 through 60-5-521.

(2) Outdoor advertising authorized under subsections (1)(a), (1)(d), and (1)(e) must conform with standards contained in and must bear permits required in rules that are adopted by the commission and this part.

(3) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if the outdoor advertising is or was erected with the purpose of its message being read from the main-traveled way and visible from the main-traveled way unless the outdoor advertising meets the criteria of subsections (1)(a), (1)(b), or (1)(c). If the outdoor advertising meets that criteria, it must conform with standards contained in rules that are adopted by the commission and with this part.

(4) An outdoor advertising structure in an unzoned commercial or industrial area that is lawfully in existence on April 21, 1995, that meets the

size requirements in 75-15-113, but that exceeds the restrictions in subsection (1)(e) of this section:

(a) must be classified as nonconforming by the department;

(b) may not be increased in size;

(c) may be maintained each year if the value of the materials used in the maintenance does not exceed 75% of the value of all of the materials required to replace the sign new; and

(d) may be replaced, if damaged, at up to and including 100% of its replacement cost.

History: En. Sec. 3, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 160, Ch. 316, L. 1974; amd. Sec. 2, Ch. 216, L. 1975; R.C.M. 1947, 32-4717; amd. Sec. 1, Ch. 497, L. 1981; amd. Sec. 19, Ch. 537, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 3, Ch. 510, L. 1995.

Cross-References

Information signs, Title 60, ch. 5, part 5.

75-15-112. Unlawful advertising. Outdoor advertising is unlawful:

(1) when erected after June 24, 1971, contrary to this part or erected after June 24, 1971, beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area with the purpose of its message being read from such main-traveled way and visible from such main-traveled way, unless such outdoor advertising meets the criteria of subsections (a), (b), or (c) of 75-15-111(1);

(2) when a permit is not obtained as prescribed in this part; or

(3) when a permittee fails to comply with a notice of violation as provided in 75-15-132.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(1).

75-15-113. Standards for permitted advertising. Except for outdoor advertising beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area, outdoor advertising permitted under 75-15-111(1)(d) and (1)(e) must conform to the following requirements:

(1) Signs may not be erected or maintained that exceed 672 square feet in area, including border and trim but excluding base or apron, supports, and other structural members.

(2) Signs may not exceed 48 feet in length.

(3) The maximum height of the sign structure, including the sign face, is 30 feet, measured at a right angle from the surface of the roadway at the centerline of the interstate or primary highway.

(4) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither may exceed 325 square feet.

(5) Double-faced, back-to-back, and V-type signs are considered to be a single sign or structure.

(6) When two or more faces, back to back, are supported by separate structures, each is considered to be a single sign.

(7) No two signs may be spaced less than 500 feet apart adjacent to an interstate highway or limited-access primary highway, except that signs may be erected closer than 500 feet if they are separated by buildings or other

obstructions in a manner that only one sign facing located within the 500-foot spacing distance is visible from the highway at any one time.

(8) Signs may not be located within 500 feet of any of the following that are adjacent to the highway unless the signs are in an incorporated area:

(a) public parks;

(b) public forests;

(c) public playgrounds;

(d) scenic areas designated as such by the department or other state agency having and exercising this authority;

(e) cemeteries.

(9) A sign may not be located on an interstate highway or freeway within 500 feet of an interchange or intersection at a grade or rest area. The 500 feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way.

(10) Signs may be illuminated, subject to the following restrictions:

(a) Signs that contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs that are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal-aid primary highway, that are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or that otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(c) A sign may not be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device, or signal.

(11) The location of sign structures situated on the primary highways between streets, roads, or highways entering or intersecting the main-traveled way must conform to the following minimum spacing criteria:

(a) When the distance between centerlines of intersecting streets or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(b) When the distance between centerlines of intersecting streets or highways is 1,000 feet or more, minimum spacing between sign structures must be 300 feet.

History: En. Sec. 5, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 89, L. 1974; amd. Sec. 162, Ch. 316, L. 1974; amd. Sec. 3, Ch. 216, L. 1975; R.C.M. 1947, 32-4719; amd. Sec. 1, Ch. 45, L. 1979; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 4, Ch. 510, L. 1995.

75-15-114 through 75-15-120 reserved.

75-15-121. Commission rules authorized. The commission may adopt rules to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this part and in conformity with 23 U.S.C. 131, as amended.

History: En. Sec. 4, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 161, Ch. 316, L. 1974; R.C.M. 1947, 32-4718.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-15-122. Permits required — identification tags — preexisting structures — fees. (1) (a) A sign authorized by 75-15-111(1)(a), (1)(d), and (1)(e) may not be constructed or maintained without a permit. Applications for permits must be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign, and the application for the permit must be accompanied by a nonrefundable, initial fee.

(b) Permits must be issued for 3 years, assigned a permit number, and renewed every 3 years after issuance upon payment of a fee without the filing of a new application. All fees received must be paid into the highway account in the state special revenue fund.

(c) The fees described in subsections (1)(a) and (1)(b) are to be determined by the square footage of the sign face and established, by rule, by the commission to cover the costs of administering and enforcing this section.

(2) The department shall issue with each new permit a permanent identification tag not larger than 36 square inches that must be affixed to the sign in a position readily visible from the highway.

(3) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits must be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for outdoor advertising lawfully in existence on June 23, 1971, and made nonconforming by virtue of 75-15-111(3), and the permits must be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

History: En. Sec. 6, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 163, Ch. 316, L. 1974; amd. Sec. 1, Ch. 22, L. 1975; amd. Sec. 4, Ch. 216, L. 1975; R.C.M. 1947, 32-4720; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 5, Ch. 510, L. 1995.

75-15-123. Acquisition of outdoor advertising rights — compensation. (1) The department may acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and which by virtue of 75-15-111(1) is nonconforming. Eminent domain shall be exercised in accordance with the laws of the state.

(2) Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of 75-15-112 or 75-15-132 without payment of compensation.

(3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed unless at the time of removal or discontinuance there

are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under 23 U.S.C. 131(g), with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state.

History: En. Sec. 9, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 166, Ch. 316, L. 1974; amd. Sec. 6, Ch. 216, L. 1975; R.C.M. 1947, 32-4723(part); amd. Sec. 14, Ch. 68, L. 1979.

Cross-References

Acquisition of property by eminent domain, 70-30-103.

75-15-124. Agreements with secretary establishing specifications for advertising. The department may enter into an agreement with the secretary regarding the size, lighting, and spacing of outdoor advertising, as provided in this part, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement and as provided in this part.

History: En. Sec. 10, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 167, Ch. 316, L. 1974; R.C.M. 1947, 32-4724.

75-15-125 through 75-15-130 reserved.

75-15-131. Entry to inspect — notice of unlawful advertising — remedial action. (1) The department may enter upon lands bearing outdoor advertising and make examination of such advertising.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure if the latter is known or, if unknown, by posting notice in a conspicuous place on the structure of its intention to remove the unlawful advertising. Within 45 days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested or if there is no appeal taken from the commission's decision at the hearing or if the commission's decision is affirmed on appeal, the department shall immediately remove or cause to be removed the unlawful outdoor advertising. The department may, upon final determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising.

(4) The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(2), (3).

Cross-References

Joint and several liability, 27-1-703.

75-15-132. False application or disrepair of structure — remedial action. When the department determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair or is unsafe, the department shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within 60 days or the permit will be revoked and action for removal of the sign commenced as provided in 75-15-131. No notice is required prior to filing a complaint after the notice period has lapsed.

History: En. Sec. 7, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 164, Ch. 316, L. 1974; R.C.M. 1947, 32-4721.

75-15-133. Nonconforming advertising as nuisance. All outdoor advertising which does not conform to the requirements of this part is a public nuisance.

History: En. Sec. 16, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 140, L. 1977; R.C.M. 1947, 32-4728.

Cross-References

Public nuisance, 27-30-102, 45-8-111.

75-15-134. Violation as misdemeanor. Any person violating any provision of this part is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4727.

Cross-References

Misdemeanor penalty when no penalty specified, 46-18-212.

Part 2
Junkyards

Part Cross-References

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

75-15-201. Purposes. (1) For the purposes of promoting the public safety, health, and welfare and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislature hereby finds and declares that junkyards which do not conform to the requirements of this part are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967; R.C.M. 1947, 32-4513.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Public nuisance, 27-30-102, 45-8-111.

75-15-202. Interpretation. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: En. Sec. 11, Ch. 285, L. 1967; R.C.M. 1947, 32-4523.

75-15-203. Definitions. As used in this part only, the following definitions apply:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may hereafter be so designated by the state transportation

commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

(2) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, or waste; iron, steel, and other old or scrap ferrous or nonferrous material.

(3) "Junkyard" means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, excluding a motor vehicle graveyard or motor vehicle wrecking facility which is regulated under Title 75, chapter 10, part 5, and excluding a garbage dump or sanitary landfill which is regulated under Title 75, chapter 10, part 2.

(4) "Primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

History: En. Sec. 2, Ch. 285, L. 1967; R.C.M. 1947, 32-4514; amd. Sec. 1, Ch. 340, L. 1983; amd. Sec. 6, Ch. 75, L. 1995.

75-15-204. Agreements with the United States. The department of transportation may enter into agreements with the United States secretary of transportation as provided in Title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems and take action in the name of the state to comply with the terms of those agreements.

History: En. Sec. 10, Ch. 285, L. 1967; amd. Sec. 159, Ch. 316, L. 1974; R.C.M. 1947, 32-4522; amd. Sec. 3, Ch. 512, L. 1991.

75-15-205. Injunction. The department of transportation may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this part for an injunction to abate such nuisance.

History: En. Sec. 9, Ch. 285, L. 1967; amd. Sec. 158, Ch. 316, L. 1974; R.C.M. 1947, 32-4521; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

75-15-206 through 75-15-210 reserved.

75-15-211. License required. No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, without obtaining a license.

History: En. Sec. 3, Ch. 285, L. 1967; amd. Sec. 12, Ch. 410, L. 1973; R.C.M. 1947, 32-4515.

75-15-212. Repealed. Sec. 5, Ch. 340, L. 1983.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(1).

75-15-213. Repealed. Sec. 5, Ch. 340, L. 1983.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(2).

75-15-214. License for junkyards. (1) The department of transportation may issue a license for a junkyard.

(2) The department of transportation may acquire an interest in land for screening purposes or may pay for screening installation and materials as authorized by this part.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(3), (4); amd. Sec. 2, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

General powers and duties of Department of Transportation, Title 60, ch. 2, part 2.

75-15-215. Restrictions as to location. No license may be granted for the establishment, maintenance, or operation of a junkyard within 1,000 feet of the nearest edge of the right-of-way of a highway on the interstate or primary systems except a license may be granted for a junkyard:

(1) screened by natural objects, planted objects, fences, or other appropriate means so as not to be visible from the main-traveled way of any such highway or otherwise removed from sight;

(2) located within an area zoned for industrial use under authority of law;

(3) located within an unzoned industrial area, as determined from actual land uses and defined by rules promulgated by the department of transportation;

(4) that is not visible from the main-traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967; R.C.M. 1947, 32-4517; amd. Sec. 15, Ch. 68, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

75-15-216 through 75-15-220 reserved.

75-15-221. Repealed. Sec. 2, Ch. 61, L. 1979.

History: En. Sec. 6, Ch. 285, L. 1967; amd. Sec. 155, Ch. 316, L. 1974; R.C.M. 1947, 32-4518.

75-15-222. Rules governing screening. (1) The department of transportation may adopt rules governing the materials to be used in and the location, planting, construction, and maintenance of screening or fencing required by this part.

(2) The department of transportation may determine that in the best interests of the state, screening in addition to that required by rules of the department of transportation as of July 1, 1979, is required of certain junkyards or motor vehicle wrecking facilities licensed under this title. The cost of any additional screening shall be borne or reimbursed by the department of transportation.

History: En. Sec. 7, Ch. 285, L. 1967; amd. Sec. 156, Ch. 316, L. 1974; amd. Sec. 10, Ch. 252, L. 1977; R.C.M. 1947, 32-4519; amd. Sec. 1, Ch. 61, L. 1979; amd. Sec. 3, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills. (1) When the department of transportation determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the department of transportation determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange, or condemnation such interests in lands as may be necessary to secure the relocation, removal, or disposal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, or sanitary landfills which were either lawfully:

(a) in existence on October 22, 1965;

(b) along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) established on or after January 1, 1968.

(3) The department of transportation shall pay just compensation to the owner for the relocation, removal, or disposal of any such facility.

(4) Any new site chosen by the department of transportation pursuant to subsection (2) for the relocation of a garbage dump or sanitary landfill must be approvable as the site of a solid waste management system pursuant to Title 75, chapter 10, part 2, and the rules promulgated under authority of that part.

History: En. Sec. 8, Ch. 285, L. 1967; amd. Sec. 157, Ch. 316, L. 1974; R.C.M. 1947, 32-4520; amd. Sec. 4, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

General powers and duties of Department of Transportation, Title 60, ch. 2, part 2.

CHAPTER 16

TRANSBOUNDARY POLLUTION

Part 1 — Uniform Transboundary Pollution Reciprocal Access Act

75-16-101. Short title.
75-16-102. Definitions.
75-16-103. Forum.
75-16-104. Right to relief.
75-16-105. Applicable law.
75-16-106. Equality of rights.
75-16-107. Right additional to other rights.
75-16-108. Application of sovereign immunity.
75-16-109. Uniformity of application and construction.

Part 1

Uniform Transboundary Pollution Reciprocal Access Act

75-16-101. Short title. This part may be cited as the "Uniform Transboundary Pollution Reciprocal Access Act".

History: En. Sec. 1, Ch. 203, L. 1983.

75-16-102. Definitions. As used in this part, the following definitions apply:

(1) "Person" means an individual person, corporation, business trust, estate, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency, or any other legal entity.

(2) "Reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a province or territory of Canada, which has enacted this part or provides substantially equivalent access to its courts and administrative agencies.

History: **En. Sec. 2, Ch. 203, L. 1983.**

75-16-103. Forum. An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating or that may originate in this state may be brought in this state.

History: **En. Sec. 3, Ch. 203, L. 1983.**

Cross-References

Persons subject to jurisdiction, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

75-16-104. Right to relief. A person who suffers or is threatened with injury to his person or property in a reciprocating jurisdiction caused by pollution originating or that may originate in this state has the same rights to relief with respect to the injury or threatened injury and may enforce those rights in this state as if the injury or threatened injury occurred in this state.

History: **En. Sec. 4, Ch. 203, L. 1983.**

Cross-References

Injury defined, 27-1-106.

Kinds of relief — when given, 27-1-107.

75-16-105. Applicable law. The law to be applied in an action or other proceeding brought pursuant to this part, including what constitutes "pollution", is the law of this state, excluding choice of law rules.

History: **En. Sec. 5, Ch. 203, L. 1983.**

Cross-References

Issues of law to be decided by court, 25-7-102.

Determination of foreign law, Rule 44.1, M.R.Civ.P. (see Title 25, ch. 20).

75-16-106. Equality of rights. This part does not accord a person injured or threatened with injury in another jurisdiction any rights superior to those that the person would have if injured or threatened with injury in this state.

History: **En. Sec. 6, Ch. 203, L. 1983.**

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

75-16-107. Right additional to other rights. The right provided in this part is in addition to and not in derogation of any other rights.

History: **En. Sec. 7, Ch. 203, L. 1983.**

75-16-108. Application of sovereign immunity. The defense of sovereign immunity is applicable in any action or other proceeding brought pursuant to this part only to the extent that it would apply to a person injured or threatened with injury in this state.

History: **En. Sec. 8, Ch. 203, L. 1983.**

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

Government liability exposure, Title 2, ch. 9, part 1.

Claims and actions against state, Title 2, ch. 9, part 3.

75-16-109. Uniformity of application and construction. This part shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this part among jurisdictions enacting it.

History: En. Sec. 9, Ch. 203, L. 1983.

CHAPTERS 17 THROUGH 19

RESERVED

CHAPTER 20

MAJOR FACILITY SITING

Part 1 — Policy and General Provisions

75-20-101. Short title.
75-20-102. Policy and legislative findings.
75-20-103. Chapter supersedes other laws or rules.
75-20-104. Definitions.
75-20-105. Adoption of rules.
75-20-106. Contracts for information.
75-20-107 through 75-20-110 reserved.
75-20-111. Grants, gifts, and funds.
75-20-112. Money to state special revenue fund.

Part 2 — Certification Proceedings

75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities.
75-20-202. Repealed.
75-20-203. Certificate transferable.
75-20-204. Facilities subject to federal energy regulatory commission jurisdiction.
75-20-205. Repealed.
75-20-206 reserved.
75-20-207. Notice requirement for certain electric transmission lines.
75-20-208. Certain electric transmission lines — verification of requirements.
75-20-209 and 75-20-210 reserved.
75-20-211. Application — filing and contents — proof of service and notice.
75-20-212. Cure for failure of service.
75-20-213. Supplemental material — amendments.
75-20-214. Repealed.
75-20-215. Filing fee — accountability — refund — use.
75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies.
75-20-217. Voiding an application.
75-20-218. Repealed.
75-20-219. Amendments to certificate.
75-20-220. Repealed.
75-20-221. Repealed.
75-20-222. Repealed.
75-20-223. Board review of department decisions.
75-20-224 reserved.
75-20-225. Certificate renewal — application — contents — filing fee.
75-20-226. Renewal study — renewal hearing — decision.
75-20-227. Repealed.
75-20-228 through 75-20-230 reserved.
75-20-231. Expedited review.
75-20-232. Criteria for identifying proposed facilities that qualify for expedited review.

Part 3 — Decisions

75-20-301. Decision of department — findings necessary for certification.
75-20-302. Conditions imposed.
75-20-303. Opinion issued with decision — contents.
75-20-304. Waiver of provisions of certification proceedings.

Part 4 — Postcertification and Legal Responsibilities

75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions.
75-20-402. Monitoring.
75-20-403. Revocation or suspension of certificate.
75-20-404. Enforcement of chapter by residents.
75-20-405. Action to recover damages to water supply.
75-20-406. Judicial review of board decisions.
75-20-407. Jurisdiction of courts restricted.
75-20-408. Penalties for violation of chapter — civil action by attorney general.
75-20-409. Optional annual installments for location of facility on landowner's property.
75-20-410. Order not stayed by appeal — stay or suspension by court — limitations.
75-20-411. Surety bond — other security.

Part 5 — Long-Range Plans (Repealed)

75-20-501. Repealed.
75-20-502. Repealed.
75-20-503. Repealed.

Parts 6 through 9 reserved

Part 10 — Geothermal Exploration

75-20-1001. Geothermal exploration — notification of department.

Part 11 — Energy Conversion Facility (Repealed. Sec. 28, Ch. 676, L. 1979)

Part 12 — Nuclear Energy Conversion

75-20-1201. Purpose — findings as to nuclear safety — reservation of nuclear facility approval powers to the people.
75-20-1202. Definitions.
75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility.
75-20-1204. Annual review of evacuation and emergency medical aid plans.
75-20-1205. Emergency approval authority invalid for nuclear facilities.

Chapter Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Application of nuclear regulation provisions, 75-3-302.

Montana Hazardous Waste and Underground Storage Tank Act, Title 75, ch. 10, part 4.

Part 1
Policy and General Provisions

75-20-101. Short title. This chapter shall be known and may be cited as the "Montana Major Facility Siting Act".

History: En. Sec. 1, Ch. 327, L. 1973; amd. Sec. 1, Ch. 494, L. 1975; R.C.M. 1947, 70-801.

Cross-References

State policy of consistency and continuity in adoption and application of environmental rules, 90-1-101.

75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will not produce unacceptable adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility acquired pursuant to this chapter.

(3) The legislature also finds that it is the purpose of this chapter to:

(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;

(b) ensure consideration of socioeconomic impacts;

(c) provide citizens with the opportunity to participate in facility siting decisions; and

(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter.

History: En. Sec. 2, Ch. 327, L. 1973; amd. Sec. 2, Ch. 494, L. 1975; R.C.M. 1947, 70-802; amd. Sec. 4, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 in (2), near beginning of last sentence, substituted "will not produce unacceptable adverse effects" for "will produce minimal adverse effects" and near end, after "environmental compatibility", deleted "and public need"; and inserted (3) concerning purpose of chapter. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-20-103. Chapter supersedes other laws or rules. This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect.

History: En. Sec. 23, Ch. 327, L. 1973; amd. Sec. 23, Ch. 494, L. 1975; R.C.M. 1947, 70-823; amd. Sec. 1, Ch. 676, L. 1979.

75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of environmental compatibility issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(c) or (8)(d), including upgrading to a design capacity covered by subsection (8)(c), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 250 megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iv) enriching uranium minerals or any addition thereto; or

(v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or any addition thereto;

(b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts that would be defined in 75-20-104(8)(a):

(i) emitting 300 tons a year of particulate matter at 10 microns or less;

(ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title 75, chapter 2;

(iii) directly affecting:

(A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;

(B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;

(C) habitat used by a threatened or endangered species of plant or animal as designated pursuant to 16 U.S.C. 1531, et seq.; or

(D) one of the following exclusion areas:

(I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;

(II) national primitive areas;

(III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;

(IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271, et seq.; or

(V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or

(iv) that would require a permanent workforce greater than 300 workers.

(c) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(d) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(e) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(f) any underground in situ gasification of coal; or

(g) an energy-related project for which the department has granted a petition pursuant to 75-20-201(5).

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

History: En. Sec. 3, Ch. 327, L. 1973; amd. Sec. 1, Ch. 231, L. 1974; amd. Sec. 1, Ch. 268, L. 1974; amd. Sec. 3, Ch. 494, L. 1975; R.C.M. 1947, 70-803; amd. Sec. 1, Ch. 133, L. 1979; amd. Sec. 1, Ch. 527, L. 1979; amd. Sec. 2, Ch. 676, L. 1979; amd. Sec. 1, Ch. 539, L. 1981; amd. Sec. 8, Ch. 573, L. 1985; amd. Sec. 1, Ch. 597, L. 1987; amd. Sec. 213, Ch. 418, L. 1995; amd. Secs. 534, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 583, L. 1995; amd. Sec. 5, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 in definition of certificate substituted "compatibility issued by the department" for "compatibility and public need issued by the board"; in definition of facility, in (a)(i), substituted "250 megawatts" for "50 megawatts", inserted (b) relating to plants generating less than 250 megawatts, in (c)(ii), near beginning, substituted "but less than 230 kilovolts" for "and up to and including 115 kilovolts", and inserted (g) relating to energy-related projects; in definition of person inserted reference to limited liability company; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Pipeline carriers, Title 69, ch. 13.

The Montana Strip and Underground Mine Reclamation Act, Title 82, ch. 4, part 2.

75-20-105. Adoption of rules. The board may adopt rules implementing the provisions of this chapter.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(1); amd. Sec. 1, Ch. 312, L. 1987.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-20-106. Contracts for information. (1) The department may contract with a potential applicant under this chapter in advance of the filing of a formal application for the development of information or provision of services required hereunder.

(2) Payments made to the department under such a contract shall be credited against the fee payable hereunder.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(c).

75-20-107 through 75-20-110 reserved.

75-20-111. Grants, gifts, and funds. The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under this chapter.

History: En. Sec. 22, Ch. 327, L. 1973; amd. Sec. 22, Ch. 494, L. 1975; R.C.M. 1947, 70-822.

75-20-112. Money to state special revenue fund. All fees, taxes, fines, and penalties collected under this chapter, except those collected by a justice's court, shall be deposited in the state special revenue fund for use by the department in carrying out its functions and responsibilities under this chapter.

History: En. 70-824 by Sec. 3, Ch. 270, L. 1975; R.C.M. 1947, 70-824; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 46, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Fund structure, 17-2-102.

Part 2
Certification Proceedings

75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(1); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 1, Ch. 167, L. 1983; amd. Sec. 6, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 in (1), at beginning, inserted "Except for a facility under diligent onsite physical construction or in operation on January 1, 1973", after "environmental compatibility" deleted "and public need", and at end substituted "department" for "board"; in (4), near beginning, substituted "department" for "board"; inserted (5) concerning energy-related project; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Facilities subject to Federal Energy Regulatory Commission jurisdiction, 75-20-204.

75-20-202. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(3) thru (5); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 2, Ch. 539, L. 1981; amd. Sec. 2, Ch. 167, L. 1983; amd. Sec. 9, Ch. 573, L. 1985; amd. Sec. 1, Ch. 591, L. 1985; amd. Sec. 214, Ch. 418, L. 1995; amd. Sec. 535, Ch. 546, L. 1995; amd. Sec. 2, Ch. 583, L. 1995.

75-20-203. Certificate transferable. A certificate may be transferred to a person who agrees to comply with the terms, conditions, and modifications contained in the certificate.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(2); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 3, Ch. 676, L. 1979; amd. Sec. 3, Ch. 583, L. 1995.

75-20-204. Facilities subject to federal energy regulatory commission jurisdiction. (1) For a facility that is subject to the jurisdiction of the federal energy regulatory commission, the department shall file a state recommendation with the commission.

(2) A person making application to the federal energy regulatory commission shall file with the department notice of and a copy of the federal application regarding any facility subject to subsection (1). The state recommendation must be based on its study of the federal application and other material gained through intervention in the federal proceeding.

(3) A person subject to the provisions of subsection (2) shall pay a fee to the department at the time that an application is filed with the federal energy regulatory commission. The fee must be used by the department to carry out its responsibilities to develop a state recommendation and participate as a party in any necessary federal proceeding to assert the state recommendation. The fee may not exceed one-half the amount that could be assessed under 75-20-215. A fee prescribed by 75-20-215 may not be assessed against a person paying a fee under this section.

(4) A person who fails to file a timely notice of and a copy of the federal application with the department, preventing the department from timely compliance with this section and with the rules, statutes, or procedures governing the proceedings before the federal energy regulatory commission, is subject to the provisions of 75-20-408.

History: En. Sec. 2, Ch. 591, L. 1985; amd. Sec. 2, Ch. 273, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 273 in (3), in first sentence after "department", deleted "pursuant to 85-2-124", in second sentence, after "responsibilities", deleted "under Title 85, chapter 2, and", and inserted third sentence limiting the fee that can be assessed; and made minor changes in style. Amendment effective April 16, 1997.

75-20-205. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 4, Ch. 591, L. 1985; amd. Sec. 1, Ch. 246, L. 1987; amd. Sec. 215, Ch. 418, L. 1995; amd. Sec. 536, Ch. 546, L. 1995.

75-20-206 reserved.

75-20-207. Notice requirement for certain electric transmission lines. Whenever a person plans to construct an electric transmission line or associated facilities under the provisions of 75-20-104(8)(c)(ii), it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than 180 days prior to the commencement of acquisition of right-of-way by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that more information concerning their rights may be obtained from the department.

History: En. Sec. 2, Ch. 597, L. 1987; amd. Sec. 7, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 in first sentence substituted "under the provisions of 75-20-104(8)(c)(ii)" for "of a design capacity of more than 69 kilovolts and up to and including 115 kilovolts that is more than 10 miles in length"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

75-20-208. Certain electric transmission lines — verification of requirements. (1) Prior to constructing a transmission line under 75-20-104(8)(c)(ii), the person planning to construct the line shall provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the department for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify that the requirements of 75-20-104(8)(c)(ii) are satisfied.

(2) The provisions of 75-20-104(8)(c)(ii) do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not been complied with.

History: En. Sec. 3, Ch. 597, L. 1987; amd. Sec. 216, Ch. 418, L. 1995; amd. Sec. 537, Ch. 546, L. 1995; amd. Sec. 8, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 throughout section substituted "75-20-104(8)(c)(ii)" for "75-20-104(8)(b)(ii)"; at end of (1) substituted "department" for "board"; and in (1)(b), after "verify", deleted "to the board". Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

75-20-209 and 75-20-210 reserved.

75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that is required under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental impact of the facility;

(iii) for facilities defined in 75-20-104(8)(c) and (8)(d), a statement explaining the need for the facility, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) (A) for facilities as defined in 75-20-104(8)(c) and (8)(d), baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104(8)(a), (8)(b), (8)(e), and (8)(f), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vi) other information that the applicant considers relevant or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.

(3) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of natural resources and conservation;

(e) department of commerce;

(f) department of transportation.

(4) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application must also be accompanied by proof that public notice of the application was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(part); amd. Sec. 1, Ch. 553, L. 1979; amd. Sec. 4, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 3, Ch. 539, L. 1981; amd. Sec. 2, Ch. 312, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 217, Ch. 418, L. 1995; amd. Sec. 538, Ch. 546, L. 1995; amd. Sec. 9, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 throughout section substituted references to 75-20-104(8)(c) and (8)(d) for references to 75-20-104(8)(b) and (8)(c); in (1)(a), near end, deleted reference to Board; deleted former (1)(a)(iii) that read: "(iii) a statement explaining the need for the facility"; in (1)(a)(iii), near beginning, inserted "a statement explaining the need for the facility"; in (1)(a)(iv)(B) substituted references to 75-20-104(8)(a), (8)(b), (8)(e), and (8)(f) for references to 75-20-104(8)(a), (8)(d), and (8)(e); in (1)(a)(vi), after "or that", deleted "the board by order or rule or"; and made minor changes in style. Amendments effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75,chapter 20."

Cross-References

Department of Revenue, 2-15-1301.

Department of Commerce, 2-15-1801.

Department of Public Service Regulation, 2-15-2601; Title 69, ch. 1, part 1.

Environmental Quality Council, Title 5, ch. 16.

Educational impact statement required — judicial enforcement, 20-1-208, 20-1-209.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Air quality permit required, 75-2-211.

Water quality permit required, Title 75, ch. 5, part 4.

Department of Fish, Wildlife, and Parks — general powers and duties, Title 87, ch. 1, part 2.

75-20-212. Cure for failure of service. Inadvertent failure of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211 may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(part); amd. Sec. 4, Ch. 583, L. 1995.

75-20-213. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate must be in the form and contain the information that the department by rule or by order prescribes. Notice of an application must be given as set forth in 75-20-211(3) through (5).

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department or the agencies listed in 75-20-216(6) from carrying out their duties and responsibilities under this chapter, the department may require additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(6); amd. Sec. 5, Ch. 676, L. 1979; amd. Sec. 218, Ch. 418, L. 1995; amd. Sec. 10, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 near middle of (1) substituted "the department by rule or by order prescribes" for "the board by rule or the department by order prescribes"; and in (2) substituted reference to 75-20-216(6) for reference to 75-20-216(5). Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

75-20-214. Repealed. Sec. 8, Ch. 591, L. 1985.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(7); amd. Sec. 6, Ch. 676, L. 1979.

75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee must be deposited in the state special revenue fund for the use of the department in administering Title 75, chapter 1, and this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter. The fee may not exceed the following scale based upon the estimated cost of the facility:

(i) 4% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) 0.125% of any amount of estimated cost over $300 million and up to $1 billion; plus

(vi) 0.05% of any amount of estimated cost over $1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required under this chapter or required for preparation of an environmental impact statement or assessment under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under a contract must be credited against the fee payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the board, and the agencies listed in 75-20-216(6) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of money expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenue derived from filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(a), (2)(b); amd. Sec. 7, Ch. 676, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 128, L. 1985; amd. Sec. 219, Ch. 418, L. 1995; amd. Sec. 11, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 near middle of first sentence of (1)(a) inserted "Title 75, chapter 1, and"; near end of first sentence of (1)(b), after "environmental impact statement", inserted "or assessment"; in fourth sentence of (2)(a) substituted reference to 75-20-216(6) for reference to 75-20-216(5); and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Fund structure, 17-2-102.

Application of nuclear regulation provisions, 75-3-302.

Facilities subject to Federal Energy Regulatory Commission jurisdiction — different fee requirement, 75-20-204.

75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department shall within 60 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided for in 75-20-231, the department shall issue within 1 year following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this part, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant

to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-20-231, within 1 year following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1945, 70-807(1), (2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 8, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 4, Ch. 539, L. 1981; amd. Sec. 3, Ch. 312, L. 1987; amd. Sec. 139, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 220, Ch. 418, L. 1995; amd. Sec. 539, Ch. 546, L. 1995; amd. Sec. 12, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 in (1) substituted "60 days" for "90 days"; in (2), near end of first sentence after "75-20-301", deleted "and 75-20-503"; in (3), in first sentence at beginning, inserted exception clause, after "application" deleted "and the board of environmental review, if applicable, within an additional 6 months shall issue", near end inserted "other than those contained in this part", and at end deleted "or the board of environmental review and this chapter", deleted former second sentence that read: "The department and the board shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the proposed location or any proposed alternate location in their decision, opinion, order, certification, or permit", substituted second sentence concerning items made under laws for "The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department and the board administer, and on any of the criteria specified in 75-20-503(2) through (7) that are a part of the determinations made under the laws administered by the department and the board", at beginning of third sentence substituted "Nevertheless, the department" for "Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board" and substituted "75-20-301(1)(c) or (3)" for "75-20-301(2)(c)", and in last sentence substituted "department" for "board"; in (4), in first sentence at beginning, inserted exception clause and substituted "1 year" for "22 months" and substituted "the department shall issue a report" for "as defined in 75-20-104(8)(a) and (8)(b) and for a facility as defined in 75-20-104(8)(b) and (8)(c) that is more than 30 miles in length and within 1 year for a facility as defined in 75-20-104(8)(b) and (8)(c) that is 30 miles or less in length, the department shall make a report to the board" and in last sentence substituted "issue its report" for "make its report to the board"; inserted (5) relating to projects subject to joint review; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.

75-20-217. Voiding an application. An application may be voided by the department following notice and an opportunity for hearing for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted under this chapter; or

(3) failure to deposit the filing fee as provided in 75-20-215.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(2); amd. Sec. 9, Ch. 676, L. 1979; amd. Sec. 5, Ch. 583, L. 1995.

75-20-218. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(4); amd. Sec. 10, Ch. 676, L. 1979; amd. Sec. 5, Ch. 539, L. 1981; amd. Sec. 10, Ch. 573, L. 1985; amd. Sec. 221, Ch. 418, L. 1995.

75-20-219. Amendments to certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with conditions as it considers appropriate.

(2) In those cases in which the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon terms or conditions that the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would

result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

(5) If an amendment is required to a certificate that would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department or board, the amendment must be processed under the applicable statutes administered by the department or board.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(3); amd. Sec. 11, Ch. 676, L. 1979; amd. Sec. 1, Ch. 372, L. 1981; amd. Sec. 4, Ch. 312, L. 1987; amd. Sec. 222, Ch. 418, L. 1995.

Cross-References

Provisions applicable to certificate renewal proceedings, 75-20-227.

75-20-220. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(3); amd. Sec. 12, Ch. 676, L. 1979; amd. Sec. 6, Ch. 539, L. 1981; amd. Sec. 223, Ch. 418, L. 1995; amd. Sec. 6, Ch. 583, L. 1995.

75-20-221. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 8, Ch. 327, L. 1973; amd. Sec. 8, Ch. 494, L. 1975; R.C.M. 1947, 70-808; amd. Sec. 2, Ch. 553, L. 1979; amd. Sec. 13, Ch. 676, L. 1979; amd. Sec. 224, Ch. 418, L. 1995; amd. Sec. 7, Ch. 583, L. 1995.

75-20-222. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(1), (2); amd. Sec. 14, Ch. 676, L. 1979.

75-20-223. Board review of department decisions. A person aggrieved by the final decision of the department on an application for a certificate, the renewal of a certificate, or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

History: En. Sec. 3, Ch. 329, L. 1997.

75-20-224 reserved.

75-20-225. Certificate renewal — application — contents — filing fee. (1) A certificate holder for a facility, as defined in 75-20-104(8)(a)(i) or (8)(b), may apply for renewal of a certificate prior to the certificate lapsing.

(2) An applicant for a renewal of a certificate shall file with the department an application in the form that the board requires by rule.

(3) An application for renewal of a certificate must include updated information on the matters listed in 75-20-211(1)(a) that have changed since the original application and other information that the board requires by rule for certification. The matters listed in 75-20-211(1)(a)(iii) and (1)(a)(iv) for the alternate locations must be updated only if the board determines that within the certified location significant changes have occurred to warrant a review of alternate locations.

(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

(5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance with 75-20-215(2). The fee is in addition

to any previous filing fee paid for processing the original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

(a) 0.125% of any estimated cost up to $300 million; plus

(b) 0.063% of any estimated cost over $300 million.

History: En. Sec. 3, Ch. 155, L. 1985; amd. Sec. 225, Ch. 418, L. 1995; amd. Sec. 540, Ch. 546, L. 1995; amd. Sec. 13, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 in (1), after "75-20-104(8)(a)(i)", inserted "or (8)(b)"; and in last sentence of (3) substituted reference to 75-20-211(1)(a)(iii) and (1)(a)(iv) for reference to 75-20-211(1)(a)(iv) and (1)(a)(v). Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

75-20-226. Renewal study — renewal hearing — decision. (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study performed in granting the certificate, considering the applicable criteria listed in 75-20-301 and the original department findings and certificate conditions.

(2) The department, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). Any air or water quality decision, opinion, order, certification, or permit must be used as part of its decisionmaking process under subsections (3), (5), and (6) of this section.

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall issue a report. This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be directed to the question of whether the original department findings and conditions have been or need to be altered as a result of any significant changes in alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301.

(4) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of responsibility. The report may include opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the cost of compiling information and issuing the required reports.

(5) Within 45 days after completion of the report pursuant to 75-20-226, the department shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the renewal application or renewing the certificate with such changes in the terms and conditions as the board considers appropriate.

(6) The department may not renew a certificate either as proposed by the applicant or as modified by the department unless it finds and determines that the criteria in 75-20-301, considering any significant changes in need, alternatives, technology, baseline environment, and environmental impact, have been met.

History: En. Sec. 4, Ch. 155, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 226, Ch. 418, L. 1995; amd. Sec. 14, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 near end of (1), after "75-20-301", deleted reference to 75-20-503 and substituted "department" for "board"; in (2), near beginning of first sentence after "department", deleted "and the board" and at end of second sentence substituted "under subsections (3), (5), and (6)" for "under 75-20-227 and subsection (3)"; in (3), at end of first sentence, substituted "department shall issue a report" for "department shall make a report to the board" and in third sentence substituted "department" for "board", before "alternatives" deleted "need", and at end deleted reference to 75-20-503; inserted (5) relating to Department requirements within 45 days of completion of the report; and inserted (6) relating to meeting certain criteria for renewal. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Department of Revenue, 2-15-1301.

Department of Commerce, 2-15-1801.

Department of Public Service Regulation, 2-15-2601; Title 69, ch. 1, part 1.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Montana Environmental Policy Act, Title 75, ch. 1.

Department of Fish, Wildlife, and Parks — general powers and duties, Title 87, ch. 1, part 2.

75-20-227. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 5, Ch. 155, L. 1985.

75-20-228 through 75-20-230 reserved.

75-20-231. Expedited review. (1) The department shall issue a certification decision within 180 days from the date on which an application is considered complete for a facility that:

(a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in 75-20-232; or

(b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to result in significant impacts pursuant to 75-20-232.

(2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study, except as provided in 75-1-201.

History: En. Sec. 1, Ch. 329, L. 1997.

75-20-232. Criteria for identifying proposed facilities that qualify for expedited review. (1) In order for a facility to qualify for expedited review under 75-20-231, the department shall make a significance determination of the impacts associated with a proposed facility. This determination is the basis of the department's decision concerning whether the proposed facility qualifies for expedited review.

(2) The department shall consider the following criteria in determining the significance of each impact that the proposed facility has on the quality of the human environment:

(a) the severity, duration, geographic extent, and frequency of occurrence of the impact;

(b) (i) the probability that the impact will occur if the proposed action occurs; or

(ii) reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;

(c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;

(d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;

(e) the importance to the state and to society of each environmental resource or value that would be affected;

(f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or to a decision in principle about future actions;

(g) potential conflict with local, state, or federal laws, requirements, or formal plans; and

(h) the degree to which the impacts on the human environment are likely to create a high level of public concern.

(3) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, expedited review is required.

History: En. Sec. 2, Ch. 329, L. 1997.

Part 3

Decisions

75-20-301. Decision of department — findings necessary for certification. (1) Within 45 days after issuance of the report pursuant to 75-20-216, for facilities defined in 75-20-104(8)(c) and (8)(d), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;

(f) that the facility will serve the public interest, convenience, and necessity;

(g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(h) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands.

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 45 days after issuance of the report pursuant to 75-20-216, for facilities defined in 75-20-104(8)(a), (8)(b), and (8)(e) through (8)(g), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; or

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, do not pose any threat of serious injury or damage to:

(i) the environment; or

(ii) the social and economic conditions of inhabitants of the affected area; or

(iii) the health, safety, or welfare of area inhabitants.

(4) To be considered an alternative to a proposed facility defined in 75-20-104(8)(a) and (8)(b), the alternative must:

(a) meet the objective of the applicant's proposal;

(b) be available to the applicant; and

(c) be reasonable and specific to the applicant's proposed site.

(5) Consideration of alternatives for facilities defined in 75-20-104(8)(c) and (8)(d) may not be a basis for requiring considerations of alternative sites for facilities defined in 75-20-104(8)(a) and (8)(b).

(6) For facilities defined in 77-20-104(8), if the department cannot make the findings required in 75-20-301, it shall deny the certificate.

History: En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(1), (3), (4); amd. Sec. 1, Ch. 69, L. 1979; amd. Sec. 15, Ch. 676, L. 1979; amd. Sec. 5, Ch. 312, L. 1987; amd. Sec. 227, Ch. 418, L. 1995; amd. Sec. 8, Ch. 583, L. 1995; amd. Sec. 15, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 deleted former (1) that read: "Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon the terms, conditions, or modifications of the construction, operation, or maintenance of the facility that the board considers appropriate"; in (1) substituted present language concerning Department approval for "The board may not grant a certificate unless it finds and determines"; deleted former (2)(d) that read: "(d) each of the criteria listed in 75-20-503"; in (1)(e) substituted "department" for "board"; in (1)(h), at end, deleted "and compatible with the environmental criteria listed in 75-20-503"; in (2) substituted "department" for "board"; deleted former (4) that read: "(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant apply only to utility facilities described in 75-20-104(8)(a)(i), (8)(b), (8)(c), and (8)(d)"; inserted (3) relating to approval within 45 days; inserted (4) relating to being considered an alternative; inserted (5) relating to consideration of separate alternatives; inserted (6) relating to denial of certificate if findings cannot be made; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Pipeline carriers, Title 69, ch. 13.

Criteria applicable to certificate renewal proceedings, 75-20-226.

75-20-302. Conditions imposed. (1) If the department determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) The department may require the applicant to post performance bonds to guarantee successful reclamation and revegetation of the project area.

History: En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(2); amd. Sec. 16, Ch. 676, L. 1979; amd. Sec. 1, Ch. 155, L. 1985; amd. Sec. 228, Ch. 418, L. 1995; amd. Sec. 541, Ch. 546, L. 1995; amd. Sec. 16, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 at beginning of (1) substituted "department" for "board"; and substituted (2) concerning performance bonds for "In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104(8)(a)(i), the board may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources." Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104(8)(c) or(8)(d) that is more than 30 miles in length, construction must be completed within 10 years.

(ii) For a facility as defined in 75-20-104(8)(c) or (8)(d) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in 75-20-104(8)(a), (8)(b), and (8)(e) through (8)(g), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended or renewed, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(1), (2); amd. Sec. 1, Ch. 120, L. 1979; amd. Sec. 4, Ch. 239, L. 1983; amd. Sec. 2, Ch. 155, L. 1985; amd. Sec. 11, Ch. 573, L. 1985; amd. Sec. 3, Ch. 591, L. 1985; amd. Sec. 229, Ch. 418, L. 1995; amd. Sec. 542, Ch. 546, L. 1995; amd. Sec. 9, Ch. 583, L. 1995; amd. Sec. 17, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 in five places substituted "department" for "board"; in (4)(a)(i) and (4)(a)(ii) substituted references to 75-20-104(8)(c) or (8)(d) for references to 75-20-104(8)(b) or (8)(c); in (4)(a)(iii) inserted references to 75-20-104(8)(b) and (8)(e) through (8)(g); and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

Pipeline carriers, Title 69, ch. 13.

75-20-304. Waiver of provisions of certification proceedings. (1) The department may waive compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 and this part.

(2) The department may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new

facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and (2)(c) and the requirements of 75-20-211(1)(a)(iii) and(1)(a)(iv) and 75-20-216(3) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the department at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution the waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in 75-20-104(8)(c), (8)(d), (8)(e), or (8)(f), for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in 75-20-104(8)(a) or (8)(b) to the extent that the process or portion of the facility is not subject to an air or water quality permit issued by the department.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection must be credited toward the fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the department under subsection (3) can be used in making a certification decision under this chapter.

(7) The department may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a).

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(3), (4); amd. Sec. 17, Ch. 676, L. 1979; amd. Sec. 7, Ch. 539, L. 1981; amd. Sec. 6, Ch. 312, L. 1987; amd. Sec. 9, Ch. 157, L. 1993; amd. Sec. 230, Ch. 418, L. 1995; amd. Sec. 543, Ch. 546, L. 1995; amd. Sec. 273, Ch. 42, L. 1997; amd. Sec. 18, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (3), after "75-20-216(3)", deleted "and 75-20-303(3)(a)(iv)"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 329 in (1), (2), (3), (6), and (7) substituted "department" for "board"; in (1), in two places after "75-20-216", deleted "through 75-20-222, 75-20-501"; in (3) substituted references to 75-20-301(1)(c), (2)(b), and (2)(c) for references to 75-20-301(2)(c), (3)(b), and (3)(c) and references to 75-20-211(1)(a)(iii) and (1)(a)(iv) for references to 75-20-211(1)(a)(iv) and (1)(a)(v) and after "75-20-216(3)" deleted "and 75-20-303(3)(a)(iv)"; in (5), in first reference to 75-20-104, substituted "(8)(c), (8)(d), (8)(e), or (8)(f)" for "(8)(b), (8)(c), (8)(d), or (8)(e)", after "75-20-104(8)(a)" inserted "or (8)(b)", and at end deleted "or board"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Part 4
Postcertification and Legal Responsibilities

75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions. (1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

History: En. Sec. 17, Ch. 327, L. 1973; amd. Sec. 17, Ch. 494, L. 1975; R.C.M. 1947, 70-817; amd. Sec. 18, Ch. 676, L. 1979; amd. Sec. 231, Ch. 418, L. 1995.

75-20-402. Monitoring. The department shall monitor the operations of all certificated facilities for ensuring continuing compliance with this chapter and certificates issued under this chapter and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in 75-20-303(3)(b) or (3)(c) to the extent federal funds available for the facility, as determined by the department, have not been provided for those purposes.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(2); amd. Sec. 19, Ch. 676, L. 1979; amd. Sec. 5, Ch. 591, L. 1985; amd. Sec. 232, Ch. 418, L. 1995; amd. Sec. 19, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 at beginning of first sentence deleted "board and the". Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

75-20-403. Revocation or suspension of certificate. Following notice and an opportunity for a hearing, a certificate may be revoked or suspended by the department:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the department's refusal to grant a certificate;

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of this chapter, the rules issued under this chapter, or orders of the department.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(1); amd. Sec. 2, Ch. 128, L. 1985; amd. Sec. 20, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 throughout section substituted reference to Department for reference to Board; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(1), (2).

Cross-References

Mandamus, Title 27, ch. 26.

Perjury, 45-7-201.

75-20-405. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy which may be available under the laws of the state.

History: En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(3).

Cross-References

Compensatory damages — right to, 27-1-202.

Consequential damages, 27-1-203.

Punitive damages — breach of obligation, 27-1-221, 27-1-303.

Actions by parties other than state — water quality, 75-5-636.

Adjudication — water rights, Title 85, ch. 2, part 2.

75-20-406. Judicial review of board decisions. (1) A person aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) When the applicant is granted a permit or certification, with or without conditions, pursuant to the laws administered by the department and the board and this chapter, the decision may be appealed only in conjunction with the final decision of the board as provided in 75-20-232 and subsections (1) and (2) of this section. If an air or water quality permit or certification is denied by the department or the board, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the air and water quality laws administered by the department and the board; or

(b) reserve the right to appeal the denial by the department or the board until after the board has issued a final decision as provided in 75-20-232.

(4) This section may not be construed to prohibit the board from holding a hearing as provided in this section on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a).

History: En. Sec. 12, Ch. 327, L. 1973; amd. Sec. 12, Ch. 494, L. 1975; R.C.M. 1947, 70-812; amd. Sec. 20, Ch. 676, L. 1979; amd. Sec. 8, Ch. 539, L. 1981; amd. Sec. 233, Ch. 418, L. 1995; amd. Sec. 21, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 in (1), at beginning, substituted "A person" for "Any active party, as defined in 75-20-221"; near beginning of (3), after "when the", deleted "board or department conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the" and inserted reference to 75-20-232; in (3)(b) inserted reference to 75-20-232; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the board under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder pursuant to 75-20-404 and 75-20-405 or 75-20-408.

History: En. Sec. 13, Ch. 327, L. 1973; amd. Sec. 13, Ch. 494, L. 1975; R.C.M. 1947, 70-813.

75-20-408. Penalties for violation of chapter — civil action by attorney general. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver thereof under 75-20-304(2) or having first obtained a certificate, constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted thereunder or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted thereunder or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than $10,000 for each violation.

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court of the first judicial district of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than $10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected shall be deposited in the state special revenue fund for the use of the department in administering this chapter.

History: En. Sec. 21, Ch. 327, L. 1973; amd. Sec. 2, Ch. 270 L. 1975; amd. Sec. 21, Ch. 494, L. 1975; R.C.M. 1947, 70-821; amd. Sec. 16, Ch. 68, L. 1979; amd. Sec. 21, Ch. 676, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Injunctions, Title 27, ch. 19.

75-20-409. Optional annual installments for location of facility on landowner's property. A landowner upon whose land a facility is proposed to be located shall have the option of receiving any negotiated settlement for use of his land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five consecutive annual installments.

History: En. Sec. 1, Ch. 71, L. 1979.

Cross-References

Servitudes and easements, Title 70, ch. 17.

75-20-410. Order not stayed by appeal — stay or suspension by court — limitations. Notwithstanding any contrary provision in the law, the pendency of an appeal from a board order does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's orders on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) No stay may be granted without notice to the parties and an opportunity to be heard by the court.

(2) No board order may be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board order must specify the nature of the damage.

History: En. Sec. 24, Ch. 676, L. 1979.

Cross-References

Stay of judgment or order pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

75-20-411. Surety bond — other security. If an order of the board is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the board; except that the cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, he does not forfeit bond nor is he responsible for damages caused by delay.

History: En. Sec. 25, Ch. 676, L. 1979.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Part 5
Long-Range Plans (Repealed)

75-20-501. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 14, Ch. 327, L. 1973; amd. Sec. 40, Ch. 213, L. 1975; amd. Sec. 14, Ch. 494, L. 1975; R.C.M. 1947, 70-814; amd. Sec. 17, Ch. 68, L. 1979; amd. Sec. 3, Ch. 553, L. 1979; amd. Sec. 22, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 116, L. 1985; amd. Sec. 6, Ch. 591, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 10, Ch. 157, L. 1993; amd. Sec. 234, Ch. 418, L. 1995.

75-20-502. Repealed. Sec. 13, Ch. 583, L. 1995.

History: En. Sec. 15, Ch. 327, L. 1973; amd. Sec. 15, Ch. 494, L. 1975; R.C.M. 1947, 70-815.

75-20-503. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 16, Ch. 327, L. 1973; amd. Sec. 16, Ch. 494, L. 1975; R.C.M. 1947, 70-816; amd. Sec. 2, Ch. 69, L. 1979; amd. Sec. 23, Ch. 676, L. 1979.

Parts 6 through 9 reserved

Part 10
Geothermal Exploration

75-20-1001. Geothermal exploration — notification of department. The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation related to the possible future development of a facility employing geothermal resources to comply with the following requirements:

(1) notify the department of the proposed action;

(2) submit to the department a description of the area involved;

(3) submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;

(4) submit to the department geological data reports at such times as may be required by the rules; and

(5) submit such other information as the board may require in the rules.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(3).

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Injury caused by geothermal exploration — statute of limitations, 27-2-303.

Part 11

Energy Conversion Facility (Repealed. Sec. 28, Ch. 676, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

75-20-1101 through 75-20-1105. En. 70-825 through 70-829 by Sec. 1 through 5, Ch. 517, L. 1975; R.C.M. 1947, 70-825 through 70-829.

Part 12

Nuclear Energy Conversion

Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Control of radioactive substances, Title 50, ch. 79.

Montana Hazardous Waste and Underground Storage Tank Act, Title 75, ch. 10, part 4.

75-20-1201. Purpose — findings as to nuclear safety — reservation of nuclear facility approval powers to the people. (1) The people of Montana find that substantial public concern exists regarding nuclear reactors and other major nuclear facilities, including the following unresolved issues:

(a) the generation of waste from nuclear facilities, which remains a severe radiological hazard for many thousands of years and to which no means of containment assuring the protection of future generations exists;

(b) the spending of scarce capital to pay the rapidly increasing costs of nuclear facilities, preventing the use of that capital to finance renewable energy sources which hold more promise for supplying useful energy, providing jobs, and holding down energy costs;

(c) the liability of nuclear facilities to sudden catastrophic accidents which can affect large areas of the state, thousands of people, and countless future generations;

(d) the refusal of utilities, industry, and government to assume normal financial responsibility for compensating victims of such nuclear accidents;

(e) the impact of nuclear facilities on the proliferation of nuclear bombs and terrorism;

(f) the increasing pattern of abandonment of used nuclear facilities by their owners, resulting in radiological dangers to present and future societies as well as higher public costs for perpetual management; and

(g) the detrimental effect of the large uranium import program necessary to the expansion of nuclear power on American energy independence, defense policy, and economic well being.

(2) Therefore, the people of Montana reserve to themselves the exclusive right to determine whether major nuclear facilities are built and operated in this state.

History: En. Sec. 1, I.M. 80, app. Nov. 7, 1978.

75-20-1202. Definitions. As used in 75-20-201, 75-20-203, and this part, the following definitions apply:

(1) "Facility", as defined in 75-20-104(8), is further defined to include any nuclear facility as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy.

History: En. Sec. 2, I.M. 80, app. Nov. 7, 1978; amd. Sec. 12, Ch. 573, L. 1985; amd. Sec. 235, Ch. 418, L. 1995; amd. Sec. 544, Ch. 546, L. 1995; amd. Sec. 22, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 in introductory phrase deleted reference to 75-20-202. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75,chapter 20."

75-20-1203. Additional requirements for issuance of a certificate for the siting of a nuclear facility. (1) The board may not issue a certificate to construct a nuclear facility unless it finds that:

(a) no legal limits exist regarding the rights of a person or group of persons to bring suit for and recover full and just compensation from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of the facility; and further, that no legal limits exist regarding the total compensation which may be required from the designers, manufacturers, distributors, owners, and/or operators of a nuclear facility for damages resulting from the existence or operation of such facility;

(b) the effectiveness of all safety systems, including but not limited to the emergency core cooling systems, of such nuclear facility has been demonstrated, to the satisfaction of the board, by the comprehensive laboratory testing of substantially similar physical systems in actual operation;

(c) the radioactive materials from such nuclear facilities can be contained with no reasonable chance, as determined by the board, of intentional or unintentional escape or diversion of such materials into the natural environment in such manner as to cause substantial or long-term harm or hazard to present or future generations due to imperfect storage technologies, earthquakes or other acts of God, theft, sabotage, acts of war or other social instabilities, or whatever other causes the board may deem to be reasonably possible, at any time during which such materials remain a radiological hazard; and

(d) the owner of such nuclear facility has posted with the board a bond totaling not less than 30% of the total capital cost of the facility, as estimated by the board, to pay for the decommissioning of the facility and the decontamination of any area contaminated with radioactive materials due to the existence or operation of the facility in the event the owner fails to pay the full costs of such decommissioning and decontamination. Excess bond, if any, shall be refunded to the owner upon demonstration, to the satisfaction of the board, that the site and environs of the facility pose no radiological danger to present or future generations and that whatever other conditions the board may deem reasonable have been met.

(2) Nothing in this section shall be construed as relieving the owner of a nuclear facility from full financial responsibility for the decommissioning of such facility and decontamination of any area contaminated with radioactive materials as a result of the existence or operation of such facility at any time during which such materials remain a radiological hazard.

History: En. Sec. 4, I.M. 80, app. Nov. 7, 1978.

75-20-1204. Annual review of evacuation and emergency medical aid plans. (1) The governor shall annually publish, publicize, and release to the news media and to the appropriate officials of affected communities, in a manner designed to inform residents of the affected communities, the entire evacuation plan specified in the licensing of each certified nuclear facility within this state. Copies of such plan shall be made available to the public upon request at no more than the cost of reproduction.

(2) The governor shall establish procedures for annual review by state and local officials of established evacuation and emergency medical aid plans with regard for, but not limited to, such factors as the adequacy of such plans, changes in traffic patterns, population densities, the locations of schools, hospitals, and industrial developments, and other factors as requested by locally elected representatives.

History: En. Sec. 5, I.M. 80, app. Nov. 7, 1978.

75-20-1205. Emergency approval authority invalid for nuclear facilities. Notwithstanding the provisions of 75-20-304(2) and (3), the board may not waive compliance with any of the provisions of 75-20-201 and 75-20-203 or this part relating to certification of a nuclear facility.

History: En. Sec. 6, I.M. 80, app. Nov. 7, 1978; amd. Sec. 7, Ch. 312, L. 1987; amd. Sec. 23, Ch. 329, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 329 deleted reference to 75-20-202; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 26, Ch. 329, L. 1997 provided: "A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20."

TITLE 76

LAND RESOURCES AND USE

Ch.
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4. State Regulation of Subdivisions.
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CHAPTER 1

PLANNING BOARDS

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Chapter Cross-References

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Part 1

General Provisions

76-1-101. Planning boards authorized. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References

Building regulations — appointment of zoning commission, Title 76, ch. 2, part 3.

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.

(5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or corporation.

(7) "Planning board" means a city planning board, a county planning board or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots, streets, and areas, marked upon the earth and represented on paper, and includes replats or amended plats.

(9) "Public place" means any tract owned by the state or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, or regional unit of government or any county, city, or town.

(12) "Utility" means any facility used in rendering service which the public has a right to demand.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; R.C.M. 1947, 11-3803(part); amd. Sec. 1, Ch. 266, L. 1979.

76-1-104. Procedure to establish county planning board — protest. (1) Before a county planning board may be created, the board of county commissioners shall by resolution give public notice of their intent to create such planning board and of a public hearing thereon by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than 15 or more than 30 days prior to the date of hearing.

(2) A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than 60 days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-1-105. Role of county in formation of city planning board. (1) Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing the county commissioners of the county in which the city is located of their intention to form a city planning board.

(2) The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within 30 days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect, the planning board to be so formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957; R.C.M. 1947, 11-3805.

76-1-106. Role of the planning board. (1) To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may also propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands;

(d) the laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(1), (2).

76-1-107. Role of planning board in relation to subdivisions and plats. The governing body of any city, town, or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to this chapter and chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971; R.C.M. 1947, 11-3842.1.

76-1-108. City-county planning board as a zoning commission. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under 76-2-307.

History: **En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(3).**

76-1-109. Interaction of local government and city-county planning board. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board, but the governing bodies shall not be bound by such recommendations.

History: **En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(4).**

76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a master plan, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, such information, documents, and plans as have been prepared or, upon the request of the board, shall provide such information as relates to the board's activity.

History: **En. Sec. 29, Ch. 246, L. 1957; R.C.M. 1947, 11-3829.**

76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination thereof wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town which becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of such representation. The governing bodies of any city or county so being represented may levy on all property which is added to the jurisdictional area of an existing board by such representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 23 or part 42, whichever is applicable; provided such tax shall not exceed the maximum levy authorized in 76-1-402 through 76-1-407.

History: **En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815.**

76-1-112. Joint or consolidated planning boards. (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination must be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement must:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may, subject to subsection (6), be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards must be dissolved and the consolidated board has the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards may not be dissolved and the joint board has the rights, duties, powers, and obligations that are contained in the interlocal agreement.

(6) Membership of any city-county board formed pursuant to this section must have representation consistent with the requirements of part 2 of this chapter.

History: **En. 11-3815.1 by Sec. 1, Ch. 101, L. 1975; R.C.M. 1947, 11-3815.1; amd. Sec. 1, Ch. 274, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 274 in (3)(c), near middle after "may", inserted "subject to subsection (6)"; inserted (6) requiring consistent representation on a city-county board; and made minor changes in style. Amendment effective July 1, 1997.

Retroactive Applicability: Section 2, Ch. 274, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all joint or consolidated city-county planning boards created after July 1, 1985, which are still in existence. [This act] does not affect any action taken by a joint or consolidated planning board prior to the effective date of [this act]." Effective July 1, 1997.

76-1-113. Effect of chapter on natural resources. (1) Except as provided in subsection (2), nothing in this chapter may be considered to authorize an ordinance, resolution, or rule that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2.

History: **En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959; R.C.M. 1947, 11-3853; amd. Sec. 1, Ch. 408, L. 1991.**

Part 2

Membership

76-1-201. Membership of city-county planning board. (1) Except as provided in subsection (2), a city-county planning board shall consist of not less than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be selected by the eight officers and citizen members hereinabove provided for from the members of the board of supervisors of a conservation district provided for in 76-15-311.

(2) Subsection (1)(e) does not apply if there is no member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In such case, the ninth member of the city-county planning board shall be selected by the eight officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979; amd. Sec. 1, Ch. 509, L. 1985.

76-1-202. Qualifications of citizen members of city-county planning board. (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3810(part), 11-3812(part), 11-3813.

76-1-203. Term of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

76-1-204. Vacancies on county and city-county planning boards. (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

76-1-205 through 76-1-210 reserved.

76-1-211. Membership of county planning board. (1) County planning boards shall consist of not less than five members appointed by the board of county commissioners. At least one member of any county planning board existing on or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in chapter 15 or a state cooperative grazing district if officers of either reside in said county.

(2) In the event that any city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2).

76-1-212. Citizen members of county planning board. (1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

76-1-213 through 76-1-220 reserved.

76-1-221. Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947; R.C.M. 1947, 11-3804(part), 11-3807.

76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806.

76-1-223. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. In the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county.

History: En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979.

76-1-224. Citizen members of city planning board. (1) The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; and

(b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

History: En. Secs. 8, 13, Ch. 246, L. 1957; amd. Secs. 3, 5, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. Sec. 3, Ch. 266, L. 1979.

Part 3

Organization and Administration

Part Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

Expense allowances for state, 2-18-501 through 2-18-503.

76-1-301. Planning board meetings. (1) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

(2) Special meetings of the planning board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all members, at least 2 days in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special

meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting.

History: En. Secs. 16, 17, Ch. 246, L. 1957; R.C.M. 1947, 11-3816, 11-3817.

76-1-302. Planning board officers. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: En. Sec. 21, Ch. 246, L. 1957; R.C.M. 1947, 11-3821.

76-1-303. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: En. Sec. 23, Ch. 246, L. 1957; R.C.M. 1947, 11-3823.

76-1-304. Quorum — official action. (1) A majority of members shall constitute a quorum.

(2) No action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963; R.C.M. 1947, 11-3818.

76-1-305. Administration of board. To effectuate the purpose of this chapter, the board shall have the power and duty to:

(1) exercise general supervision of and make regulations for the administration of the affairs of the board;

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep an accurate and complete record of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the board;

(4) make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction;

(5) prepare, publish, and distribute reports, proposed ordinances and proposed resolutions, and other material relating to the activities authorized under this chapter.

History: En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; R.C.M. 1947, 11-3824(part).

76-1-306. Board secretary and employees — service contracts. (1) The board may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the board.

(2) To effectuate the purpose of this chapter, the board shall have the power and duty to prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

(3) The board may make contracts for special or temporary services and any professional services.

History: (1), (3)En. Sec. 22, Ch. 246, L. 1957; Sec. 11-3822, R.C.M. 1947; (2)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; R.C.M. 1947, 11-3822, 11-3824(part).

76-1-307. Compensation and expenses of board members and employees. (1) The members of planning boards shall receive no salary for serving on the planning board but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

(2) When the planning board determines that it is necessary for members or employees to attend a regional or national conference or interview in another city, county, or state dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employees provided the amount has been made available in the board's appropriation.

History: (1)En. Sec. 19, Ch. 246, L. 1957; amd. Sec. 1, Ch. 291, L. 1974; Sec. 11-3819, R.C.M. 1947; (2)En. Sec. 20, Ch. 246, L. 1957; amd. Sec. 7, Ch. 247, L. 1963; Sec. 11-3820, R.C.M. 1947; R.C.M. 1947, 11-3819, 11-3820.

Part 4

Financial Administration

Part Cross-References

County land planning assistance, 90-1-108.

76-1-401. Fiscal administration. (1) To effectuate the purpose of this chapter, the board shall have the power and duty to:

(a) supervise the fiscal affairs and responsibilities of the board;

(b) prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

(2) The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this chapter.

History: (1)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; (2)En. Sec. 26, Ch. 246, L. 1957; Sec. 11-3826, R.C.M. 1947; R.C.M. 1947, 11-3824(part), 11-3826.

76-1-402. Funding of board operation. (1) After a city council has by ordinance, a board of county commissioners has by ordinance and resolution, or a city council and board of county commissioners have by ordinance and resolution created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

(2) When a planning board has been created by agreement of more than one governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(1), (2).

76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax not to exceed the maximum levy authorized by 76-1-405 for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(5); amd. Sec. 4, Ch. 266, L. 1979.

76-1-404. Tax levy by county for city-county planning board authorized. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23, provided such tax shall not exceed the maximum levy authorized in 76-1-405.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(4).

76-1-405. Maximum county mill levy — authorization for levy. The tax levy for planning board purposes shall be limited as follows:

(1) A county of the first class, as defined in 7-1-2111, may levy a tax not to exceed 2 mills.

(2) A county of the second class may levy a tax not to exceed 3 mills.

(3) A county of the third class may levy a tax not to exceed 4 mills.

(4) A county of the fourth class may levy a tax not to exceed 5 mills.

(5) Counties of the fifth, sixth, and seventh classes may levy a tax not to exceed 6 mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).

76-1-406. Tax levy by municipalities authorized. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 42, provided such tax shall not exceed the maximum levy authorized in 76-1-407.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(3); amd. Sec. 5, Ch. 266, L. 1979.

76-1-407. Maximum city mill levy. The tax levy for planning board purposes shall be limited as follows:

(1) A city of the first class, as defined in 7-1-4111, may levy a tax not to exceed 2 mills.

(2) A city of the second class may levy a tax not to exceed 4 mills.

(3) A city of the third class may levy a tax not to exceed 6 mills.

(4) A town may levy a tax not to exceed 6 mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).

76-1-408. Acceptance and administration of gifts and donations. (1) A city, county, or city-county planning board organized pursuant to the provisions of this chapter is hereby empowered and given the right to:

(a) accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest or any property (real, personal, or mixed) or any improved or unimproved park or playground; and

(b) utilize, hold, or dispose of the same for planning purposes not inconsistent with the provisions of this chapter.

(2) Any money so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part).

76-1-409. Acceptance and administration of government funds and services. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, from state or local governments or their agencies and instrumentalities, or from civic sources; may contract with respect thereto; and may provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part); amd. Sec. 6, Ch. 266, L. 1979.

Part 5

Jurisdictional Area

76-1-501. Jurisdictional area of county planning board. The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507. Should any city or town become represented on the county planning board pursuant to 76-1-111, the jurisdictional area of the county planning board shall be extended to include that city or town.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(1).

76-1-502. Filing of map of jurisdictional area of county planning board — revision of boundaries. The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(2).

76-1-503. Resolution of conflicts involving jurisdictional area of county planning boards. (1) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in 76-1-502 and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(2) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies, and a map showing the boundary lines so agreed upon shall be filed as provided in 76-1-502 and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(3), (4).

76-1-504. Jurisdictional area of city-county planning board. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

76-1-505. Extension of boundaries of city-county planning board jurisdictional area. (1) The boundaries of the jurisdictional area can be extended further than 4 ½ miles from the limits of the cities only upon petition signed by 5% or more of the resident freeholders living in excess of 4 ½ miles and not more than 12 miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits and upon presentation of said petition to the board of county commissioners.

(2) Thereafter, the board of county commissioners must by resolution set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition by publication of notice of time and place of hearing on said petition and resolution. Said notice is to be published in a newspaper published in the county not less than 10 or more than 20 days prior to the date of said hearing. Thereafter, the boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than 12 miles beyond the limits of any city within the jurisdictional area.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-1-506. Filing of map of jurisdictional area of city-county planning board — revision of boundaries. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(2).

76-1-507. Resolution of conflicts over jurisdictional areas of several city-county planning boards. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. A map showing the boundary lines so agreed upon and approved shall be filed as provided in 76-1-506 and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(3).

76-1-508. Planning projects outside city-county planning board jurisdictional area — broad construction. (1) Any city-county planning board organized pursuant to the provisions of this chapter is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county and outside of the jurisdictional area of said city-county planning board as defined in 76-1-504 through 76-1-507.

(2) Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

History: En. Sec. 1, Ch. 190, L. 1965; R.C.M. 1947, 11-3830.1.

Part 6

Master Plan

Part Cross-References

Compliance with plan required for annexation, 7-2-4734(3).

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

Compliance required by cemetery associations, 35-20-201.

76-1-601. Master plan — contents. The planning board shall prepare and propose a master plan for the jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body. The plan may include:

(1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;

(2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:

(a) history, population, and physical site conditions;

(b) land use, including the height, area, bulk, location, and use of private and public structures and premises;

(c) population densities;

(d) community centers and neighborhood units;

(e) blighted and slum areas;

(f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

(g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

(h) flood control and prevention;

(i) public and private utilities, including water, light, heat, communication, and other services;

(j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;

(k) local mass transit, including motor and trolley bus; street, elevated, or underground railways; and taxicabs;

(l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;

(m) public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

(n) education, including location and extent of schools, colleges, and universities;

(o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;

(p) conservation of water, soil, agricultural, and mineral resources;

(q) any other factors which are a part of the physical, economic, or social situation within the city or county;

(3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;

(4) a long-range development program of public works projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;

(5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

History: **Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831.**

76-1-602. Public hearing on proposed master plan. (1) Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: **En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963; R.C.M. 1947, 11-3833.**

76-1-603. Adoption of master plan by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: **En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834.**

76-1-604. Adoption, revision, or rejection of master plan. (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject the proposed plan or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed plan or any of its parts, they may, in their discretion, submit to the qualified electors of the jurisdictional area included within the proposed plan at the next primary or general election or at a special election the referendum question of whether or not the plan should be adopted. A special election must be held in conjunction with a regular or primary election. Except as provided in this section, the provisions of Title 7, chapter 5, part 1, apply to the referendum election.

(3) The governing bodies may adopt, revise, or repeal a master plan under this section.

(4) The qualified electors of the jurisdictional area included within the master plan may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a master plan under this section.

History: **En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 1, Ch. 541, L. 1981; amd. Sec. 68, Ch. 387, L. 1995.**

76-1-605. Use of adopted master plan. After adoption of the master plan, the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

(3) adoption of subdivision controls;

(4) adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part).

76-1-606. Effect of master plan on subdivisions and plats. (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter:

(a) a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(b) a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(3) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; R.C.M. 1947, 11-3842.

CHAPTER 2

PLANNING AND ZONING

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Part 1

County Planning and Zoning Commission

Part Cross-References

Inclusion of zoning district within municipal jurisdictional area, 50-60-101(9)(b).

76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district and to appoint a commission consisting of five members.

(2) No such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" shall mean any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(5) If freeholders representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year.

History: (1), (2)En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; Sec. 16-4101, R.C.M. 1947; (3)En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955; Sec. 16-4107, R.C.M. 1947; R.C.M. 1947, 16-4101(part), 16-4107; (4)En. Sec. 1, Ch. 441, L. 1989; amd. Sec. 1, Ch. 591, L. 1995.

76-2-102. Organization and operation of commission. (1) The commission is to consist of the three county commissioners, the county surveyor, and a county official appointed by the county commissioners. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board must be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within the district.

History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part); amd. Sec. 137, Ch. 27, Sp. L. November 1993.

76-2-103. Powers of commission and employees. (1) In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.

(2) The planning and zoning commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-104. Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-105. Continuation of prior nonconforming uses. Existing nonconforming uses may be continued although not in conformity with such zoning regulations.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-106. Adoption of development district. (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953; R.C.M. 1947, 16-4103.

76-2-107. Preparation of resolutions and other materials. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof and including procedure for appeals from decisions made under the authority of such regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such resolutions.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-108. Permits authorized. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-109. Effect on natural resources. No planning district or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-110. Appeal procedure. Any person aggrieved by any decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-111. Cooperation by public agencies with commission. All public officials, departments, and agencies having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-112. Effect on powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of county commissioners having jurisdiction over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: En. Sec. 6, Ch. 154, L. 1953; R.C.M. 1947, 16-4106.

Part 2
County Zoning

Part Cross-References

Inclusion of zoning district within municipal jurisdictional area, 50-60-101(9)(b).

76-2-201. County zoning authorized. For the purpose of promoting the health, safety, morals, and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to chapter 1, the boards of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this part.

History: En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701.

76-2-202. Establishment of zoning districts — regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 61-1-501.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

History: En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971; R.C.M. 1947, 16-4703; (1)(b)En. Sec. 2, Ch. 441, L. 1989; amd. Sec. 1, Ch. 505, L. 1993; amd. Sec. 274, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1)(b), near middle after "commenced", deleted "by October 1, 1994, or" and at end deleted "if the district was created after October 1, 1989"; in (6), near end, substituted "mobile home or housetrailer, as defined in 61-1-501" for "mobile home, as defined in 61-4-309, or a housetrailer, as defined in 61-1-501"; and made minor changes in style. Amendment effective March 12, 1997.

76-2-203. Criteria and guidelines for zoning regulations. The zoning regulations shall be made in accordance with a comprehensive development plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area. The zoning regulations shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

History: En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704.

76-2-204. Role of planning boards. (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.

(2) This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971; R.C.M. 1947, 16-4702.

76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) the time and place of the public hearing;

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the freeholders within the district whose names appear on the last-completed assessment roll or if freeholders representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

History: En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 16-4705; amd. Sec. 2, Ch. 591, L. 1995.

76-2-206. Interim zoning map or regulation. (1) If a county is conducting or in good faith intends to conduct studies within a reasonable time or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this part, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency.

(2) Such interim resolution shall be limited to 1 year from the date it becomes effective. The board of county commissioners may extend such interim resolution for 1 year, but not more than one such extension may be made.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711.

76-2-207. Permits authorized. The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

History: En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).

76-2-208. Continuation of nonconforming uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.

History: En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709.

76-2-209. Effect on natural resources. (1) Except as provided in 82-4-431 and 82-4-432, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under this chapter.

History: **En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710; amd. Sec. 2, Ch. 408, L. 1991.**

76-2-210. Enforcement of zoning provisions. (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(2) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

History: **En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part).**

76-2-211. Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or both.

History: **En. Sec. 7, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.**

76-2-212 through 76-2-219 reserved.

76-2-220. Zoning commission — appointment — duties. (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days' notice of the time and place of the hearing and must be published in the contracted newspaper provided for in 7-5-2411 or a newspaper of general circulation in the county. Recommendations of the zoning commission must be submitted to the county commissioners.

History: **En. Sec. 1, Ch. 462, L. 1981.**

76-2-221. Board of adjustment. (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

76-2-222. Membership and term of board members — vacancies. (1) The board of adjustment consists of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

(2) Vacancies must be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(1); amd. Sec. 1, Ch. 47, L. 1987; amd. Sec. 275, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), at beginning, deleted "Except as provided in subsection (3)"; deleted (3) that read: "(3) Within 30 days after January 1, 1988, the board of county commissioners shall designate two members of the board of adjustment whose terms must end in 1988 and three members whose terms must end in 1989. Subsequent appointments must be made for a term of 2 years"; and made minor changes in style. Amendment effective March 12, 1997.

76-2-223. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;

(c) to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(5), (6).

76-2-224. Vote needed for board action. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(7).

76-2-225. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

76-2-226. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing, any party may appear in person or by his attorney.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(3), (4).

76-2-227. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the county may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (upon application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(8) thru (11).

76-2-228. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(12).

Part 3

Municipal Zoning

76-2-301. Municipal zoning authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929; re-en. Sec. 5305.1, R.C.M. 1935; R.C.M. 1947, 11-2701.

Cross-References

Incorporation of technical codes by reference, 7-5-4202.

76-2-302. Zoning districts. (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 61-1-501.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(1); amd. Sec. 2, Ch. 505, L. 1993; amd. Sec. 276, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (4), near end, substituted "mobile home or housetrailer, as defined in 61-1-501" for "mobile home, as defined in 61-4-309, or a housetrailer, as defined in 61-1-501"; and made minor changes in style. Amendment effective March 12, 1997.

76-2-303. Procedure to administer certain annexations and zoning laws — hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, and enforced and from time to time amended, supplemented, or changed.

(2) However, a regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation, provided that the municipality continues on the annexed property a land use comparable to the land use authorized by county zoning. A joint hearing authorized under this subsection fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation.

History: En. Sec. 4, Ch. 136, L. 1929; re-en. Sec. 5305.4, R.C.M. 1935; R.C.M. 1947, 11-2704; amd. Sec. 1, Ch. 217, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 217 inserted (3) regarding a municipal annexation hearing or joint annexation and zoning hearing; and made minor changes in style.

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-2-304. Purposes of zoning. (1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

History: **En. Sec. 3, Ch. 136, L. 1929; re-en. Sec. 5305.3, R.C.M. 1935; R.C.M. 1947, 11-2703.**

76-2-305. Alteration of zoning regulations — protest. (1) Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice shall apply equally to all changes or amendments.

(2) In case, however, of a protest against such change signed by the owners of 20% or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending 150 feet therefrom or of those adjacent on either side thereof within the same block or of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality.

History: **En. Sec. 5, Ch. 136, L. 1929; re-en. Sec. 5305.5, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1969; R.C.M. 1947, 11-2705.**

76-2-306. Interim zoning ordinances. (1) The city or town council or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time.

(2) Such interim ordinance shall only be applicable within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least 7 days before the hearing.

(3) Such interim ordinance shall be of no further force and effect 6 months from the date of adoption thereof. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend such interim ordinance for 1 year. Any such extension shall require a two-thirds vote for

passage and shall become effective upon passage. Not more than two such extensions may be adopted.

History: **En. 11-2711 by Sec. 1, Ch. 488, L. 1975; R.C.M. 1947, 11-2711.**

76-2-307. Zoning commission. In order to avail itself of the powers conferred by this part, except 76-2-306, the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: **En. Sec. 6, Ch. 136, L. 1929; re-en. Sec. 5305.6, R.C.M. 1935; R.C.M. 1947, 11-2706.**

Cross-References

When zoning commission to act as airport zoning commission, 67-6-202.

City-County Planning Boards, Title 76, ch. 1.

76-2-308. Enforcement of zoning regulations and ordinances. (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance made thereunder.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

History: **En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 8, Ch. 266, L. 1979.**

76-2-309. Conflict with other laws. (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part shall govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by the regulations made under authority of this part, the provisions of such statute or local ordinance or regulation shall govern.

History: **En. Sec. 9, Ch. 136, L. 1929; re-en. Sec. 5305.9, R.C.M. 1935; R.C.M. 1947, 11-2709.**

76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries. (1) The local city or town council or other legislative body which has adopted a master plan pursuant to chapter 1 may extend the application of its zoning or subdivision regulations, or both, beyond its limits in any direction but not in a county which has adopted such regulations within the contemplated area.

(2) (a) A city of the first class as defined in 7-1-4111 may not extend the application of its zoning or subdivision regulations, or both, more than 3 miles beyond its limits, a city of the second class may not so extend more than 2 miles beyond its limits, and a city or town of the third class may not so extend more than 1 mile beyond its limits.

(b) Where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, 76-2-302, and 76-2-311, then the extension of zoning or subdivision regulations, or both, by these cities shall terminate at a boundary line agreed upon by the cities so concerned.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-311. Administration of regulations in extended area. (1) Any city or town council or other legislative body may thereafter enforce such regulations in the area to the same extent, as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-312. Exclusion for commission-manager plan municipalities. A city or town which has as its plan of government the commission-manager plan shall be excluded from the provisions of 76-2-310 and 76-2-311 which define extraterritorial authority to review proposed subdivisions.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-313. Renumbered 76-2-411 by Code Commissioner, 1983.

76-2-314. Renumbered 76-2-412 by Code Commissioner, 1983.

76-2-315. Violations and penalties. (1) A violation of this part or of such ordinance or regulation made pursuant to 76-2-308(1) is a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 9, Ch. 266, L. 1979.

76-2-316 through 76-2-320 reserved.

76-2-321. Board of adjustment. (1) Such city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

76-2-322. Membership and term of board members — vacancies. (1) The board of adjustment shall consist of not less than five or more than seven members to be appointed for a term to be specified by the city or town council or other legislative body or, if no term is specified, then for a term of 3 years. A member is removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(1); amd. Sec. 1, Ch. 67, L. 1985; amd. Sec. 1, Ch. 110, L. 1987.

76-2-323. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any ordinance adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;

(c) to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from

and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(5), (6).

Cross-References

Application of Montana Rules of Civil Procedure to this section, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-2-324. Vote needed for board action. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(7).

76-2-325. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

76-2-326. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing any party may appear in person or by attorney.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(3), (4).

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-2-327. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (on application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(8) thru (11).

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-2-328. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(12).

Part 4

Application to Governmental Agencies Group and Foster Homes

76-2-401. Definitions. As used in 76-2-402, the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

History: En. Sec. 1, Ch. 397, L. 1981.

76-2-402. Local zoning regulations — application to agencies. Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

History: En. Sec. 2, Ch. 397, L. 1981.

76-2-403 through 76-2-410 reserved.

76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons which does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home.

History: En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975; R.C.M. 1947, 11-2702.1; MCA 1981, 76-2-313; redes. 76-2-411 by Code Commissioner, 1983; amd. Sec. 28, Ch. 465, L. 1983; amd. Sec. 1, Ch. 309, L. 1985; amd. Sec. 9, Ch. 514, L. 1987; amd. Sec. 236, Ch. 418, L. 1995; amd. Sec. 545, Ch. 546, L. 1995.

76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving 8 or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in

general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services.

History: En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974; R.C.M. 1947, 11-2702.2; MCA 1981, 76-2-314; redes. 76-2-412 by Code Commissioner, 1983; amd. Sec. 29, Ch. 465, L. 1983; amd. Sec. 1, Ch. 181, L. 1987; amd. Sec. 237, Ch. 418, L. 1995; amd. Sec. 546, Ch. 546, L. 1995.

Parts 5 through 8 reserved

Part 9

Agricultural Activities

76-2-901. Agricultural activities — legislative finding and purpose. (1) The legislature finds that agricultural lands and the ability and right of farmers and ranchers to produce a safe, abundant, and secure food and fiber supply have been the basis of economic growth and development of all sectors of Montana's economy. In order to sustain Montana's valuable farm economy and land bases associated with it, farmers and ranchers must be encouraged and have the right to stay in farming.

(2) It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances.

History: En. Sec. 1, Ch. 309, L. 1995.

Cross-References

Nuisance defined, 27-30-101.

76-2-902. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural activity" means a condition or activity that provides an annual gross income of not less than $1,500 or that occurs on land classified as agricultural or forest land for taxation purposes. The condition or activity must occur in connection with the commercial production of farm products and includes but is not limited to:

(a) produce marketed at roadside stands or farm markets;

(b) noise;

(c) odors;

(d) dust;

(e) fumes;

(f) operation of machinery and irrigation pumps;

(g) movement of water for agricultural activities, including but not limited to use of existing county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities;

(h) ground and aerial application of seed, fertilizers, conditioners, and plant protection products;

(i) employment and use of labor;

(j) roadway movement of equipment and livestock;
(k) protection from damage from wildlife;
(l) prevention of trespass;
(m) construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of stream banks and water courses;
(n) conversion from one agricultural activity to another, provided that the conversion does not adversely impact adjacent property owners;
(o) timber harvesting, thinning, and timber regeneration;
(p) burning and stubble and slash disposal; and
(q) plant nursery and commercial greenhouse activities.

(2) "Commercial production of farm products" means the growing, raising, or marketing of plants or animals by the owner, owner's agent, or lessee of land that provides an annual gross income of not less than $1,500 or that occurs on land that is classified as agricultural or forest land for taxation purposes. The term includes but is not limited to:
(a) forages and sod crops;
(b) dairy and dairy products;
(c) poultry and poultry products;
(d) livestock, including breeding, feeding, and grazing of livestock and recreational equine use;
(e) fruits;
(f) vegetables;
(g) flowers;
(h) seeds;
(i) grasses;
(j) trees, including commercial timber;
(k) fresh water fish and fish products;
(l) apiaries;
(m) equine and other similar products; or
(n) any other product that incorporates the use of food, feed, fiber, or fur.

History: En. Sec. 2, Ch. 309, L. 1995.

76-2-903. Local ordinances. A city, county, taxing district, or other political subdivision of this state may not adopt an ordinance or resolution that prohibits any existing agricultural activities or forces the termination of any existing agricultural activities outside the boundaries of an incorporated city or town. Zoning and nuisance ordinances may not prohibit agricultural activities that were established outside the corporate limits of a municipality and then incorporated into that municipality by annexation.

History: En. Sec. 3, Ch. 309, L. 1995.

CHAPTER 3

LOCAL REGULATION OF SUBDIVISIONS

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Chapter Cross-References

Municipal subdivisions required to conform to subdivision laws, 7-3-4445.

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Conservation easements preventing subdivision of land, 76-6-203.

Water use — ground water, Title 85, ch. 2, part 5.

Part 1
General Provisions

Part Cross-References

Conservation easements preventing subdivision of land, 76-6-203.

76-3-101. Short title. This chapter may be cited as the "Montana Subdivision and Platting Act".

History: En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

76-3-102. Statement of purpose. It is the purpose of this chapter to:

(1) promote the public health, safety, and general welfare by regulating the subdivision of land;

(2) prevent overcrowding of land;

(3) lessen congestion in the streets and highways;

(4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;

(5) require development in harmony with the natural environment;

(6) protect the rights of property owners; and

(7) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860; amd. Sec. 1, Ch. 272, L. 1993; amd. Sec. 2, Ch. 468, L. 1995.

76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(4) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(5) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(6) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(7) "Immediate family" means a spouse, children by blood or adoption, and parents.

(8) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(9) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(10) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(11) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(12) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

(13) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any

other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 140, Ch. 370, L. 1987; amd. Sec. 2, Ch. 272, L. 1993; amd. Sec. 1, Ch. 503, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 503 in definition of division of land inserted second sentence concerning exclusions from definition; inserted definition of immediate family; in definition of tract of record, before "parcel of land", inserted "an individual" and inserted (b) and (c) concerning individual tract of record and instrument of conveyance; and made minor changes in style. Amendment effective May 1, 1997.

Effective Date — Retroactive Applicability: Section 5, Ch. 503, L. 1997, provided: "[This act] [76-3-103, 76-3-201, and 76-3-507] is effective on passage and approval [approved May 1, 1997], and [section 1] [76-3-103] applies retroactively, within the meaning of 1-2-109, to tracts filed before [the effective date of this act]." Effective May 1, 1997.

76-3-104. What constitutes subdivision. A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 3, Ch. 272, L. 1993.

76-3-105. Violations. Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than $100 or more than $500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876.

Part 2
Miscellaneous Exemptions

Part Cross-References
County taxation, Title 7, ch. 6, part 25.
Property tax levies, Title 15, ch. 10.
Unit Ownership Act, Title 70, ch. 23.

76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) is created to provide security for construction mortgages, liens, or trust indentures;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(9); amd. Sec. 2, Ch. 503, L. 1997.

Compiler's Comments
1997 Amendment: Chapter 503 inserted (2) concerning notice to governing body in case of division of land under subsection (1)(a); and made minor changes in style. Amendment effective May 1, 1997.

76-3-202. Exemption for structures on complying subdivided lands. Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

76-3-203. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10); amd. Sec. 1, Ch. 500, L. 1985.

76-3-205. Exemption for state-owned lands — exception. The provisions of this chapter shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5).

76-3-206. Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) A division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989; amd. Sec. 4, Ch. 272, L. 1993; amd. Sec. 3, Ch. 366, L. 1993; amd. Sec. 3, Ch. 468, L. 1995.

76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions. Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).

76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).

76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within a master planning area adopted pursuant to chapter 1 wherein zoning regulations pursuant to part 3 of chapter 2 or 76-2-201 and a long-range development program of public works projects pursuant to 76-1-601 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(2) (a) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than 10 parcels and less than 20 acres, a planning board established pursuant to chapter 1 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment.

(b) When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this subsection (2).

History: (1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1).

Part 3
Land Transfers

Part Cross-References
County taxation, Title 7, ch. 6, part 25.
Property tax levies, Title 15, ch. 10.

76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979.

76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements. (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents which, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3); amd. Sec. 1, Ch. 268, L. 1987.

76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract;

(4) that the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner.".

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4); amd. Sec. 2, Ch. 379, L. 1985.

76-3-304. Effect of recording complying plat. The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).

76-3-305. Vacation of plats — utility easements. (1) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1); amd. Sec. 1, Ch. 100, L. 1995; amd. Sec. 277, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in first sentence, substituted "provided in this part" for "provided in this section". Amendment effective March 12, 1997.

76-3-306. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.

Cross-References

Covenants running with land, Title 70, ch. 17, part 2.

76-3-307. Donations or grants to public considered a grant to donee. Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.

Part 4

Survey Requirements

Part Cross-References

Board of Professional Engineers and Professional Land Surveyors — licensing, Title 37, ch. 67.

76-3-401. Survey requirements for lands other than subdivisions. All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of 76-3-406.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1); amd. Sec. 2, Ch. 136, L. 1993.

76-3-402. Survey and platting requirements for subdivided lands. (1) Every subdivision of land after June 30, 1973, must be surveyed and platted in conformance with this chapter, including the requirements of 76-3-406, by or under the supervision of a registered land surveyor.

(2) Subdivision plats must be prepared and filed in accordance with this chapter and regulations adopted pursuant to this chapter.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this chapter and regulations adopted pursuant to this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2); amd. Sec. 3, Ch. 136, L. 1993.

76-3-403. Monumentation. (1) The department of commerce shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12); amd. Sec. 6, Ch. 274, L. 1981.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

76-3-404. Certificate of survey. (1) Within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this chapter.

History: En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979.

76-3-405. Administration of oaths by registered land surveyor. (1) Every registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404.

History: En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979.

76-3-406. Surveys affecting irrigation districts — additional survey requirements. (1) (a) A surveyor who completes a survey identified in subsection (2) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than 1 section shall note on the survey the acreage of the farm unit or created parcel in each section.

(b) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(2) The requirements of subsection (1) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

(a) traversed by a canal or ditch owned by an irrigation district; or

(b) included in an irrigation district.

(3) For purposes of this section, "irrigation district" means a district established pursuant to Title 85, chapter 7.

History: En. Sec. 1, Ch. 136, L. 1993.

Part 5

Local Regulations

76-3-501. Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage; subject to the provisions of 76-3-511, for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985; amd. Sec. 17, Ch. 471, L. 1995.

76-3-502. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501, it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995.

76-3-505. Provision for summary review of subdivisions. Local subdivision regulations must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels when proper access to all lots is provided, when no land in the subdivision will be dedicated to public use for parks or playgrounds, and when the plats have been approved by the department of environmental quality whenever approval is required by part 1 of chapter 4; however, reasonable local regulations may contain additional requirements for summary approval.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5); amd. Sec. 1, Ch. 579, L. 1985; amd. Sec. 1, Ch. 256, L. 1987; amd. Sec. 239, Ch. 418, L. 1995.

76-3-506. Provision for granting variances. Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6).

76-3-507. Provision for bonding requirements to ensure construction of public improvements. (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete required improvements within the subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7); amd. Sec. 4, Ch. 468, L. 1995; amd. Sec. 3, Ch. 503, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 503 in (2)(a), in first sentence near beginning, inserted "the governing body shall at the subdivider's option allow"; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

76-3-508. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

76-3-509 reserved.

76-3-510. Payment for extension of capital facilities. A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

History: En. Sec. 8, Ch. 468, L. 1995.

76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a rule under 76-3-501 or 76-3-504(6)(c) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504(6)(c) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the rule. If the governing body determines that the rule is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the governing body for a rule review under subsection (4)(a) if the governing body adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body rule.

History: En. Sec. 5, Ch. 471, L. 1995; amd. Sec. 278, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 at beginning of first sentence of (1) deleted "After April 14, 1995"; in (1), in first sentence, and in (2), near beginning, substituted "76-3-504(6)(c)" for "76-3-504(5)(c)"; and made minor changes in style. Amendment effective March 12, 1997.

Part 6

Local Review Procedure

76-3-601. Submission of preliminary plat for review. (1) Except when a plat is eligible for summary approval, the subdivider shall present to the governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981; amd. Sec. 4, Ch. 506, L. 1995.

76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868.

76-3-603. Contents of environmental assessment. When required, the environmental assessment must accompany the preliminary plat and must include:

(1) for a major subdivision:

(a) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; and

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(2) except as provided in 76-3-609(3), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981; amd. Sec. 5, Ch. 468, L. 1995.

76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part).

76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

(3) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981; amd. Sec. 21, Ch. 526, L. 1983.

76-3-606. Repealed. Sec. 11, Ch. 468, L. 1995.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

76-3-607. Repealed. Sec. 11, Ch. 468, L. 1995.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).

76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) When a minor subdivision is proposed in an area where a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the plan, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a master plan to serve as the basis for the exemption provided by this subsection (6), the plan must, at a minimum, contain:

(i) housing, transportation, and land-use elements sufficient for the governing body to protect public health, safety, and welfare; and

(ii) a discussion of physical constraints on development that exist within the area encompassed by the proposed subdivision.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4); amd. Sec. 5, Ch. 272, L. 1993; amd. Sec. 6, Ch. 468, L. 1995.

76-3-609. Review procedure for minor subdivisions. Subdivisions containing five or fewer parcels in which proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(1) The governing body shall approve, conditionally approve, or disapprove the first minor subdivision from a tract of record within 35 days of the submission of the application.

(2) The governing body shall state in writing the conditions that must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(3) The requirements for holding a public hearing and preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record.

(4) Subsequent subdivisions from a tract of record must be reviewed under 76-3-505 and regulations adopted pursuant to that section.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987; amd. Sec. 7, Ch. 468, L. 1995.

76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in subsection (1).

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983.

76-3-611. Review of final plat. (1) The governing body shall examine each final subdivision plat and shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter; and

(b) the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

(b) A land surveyor may not act as an examining land surveyor in regard to a plat or certificate of survey in which the surveyor has a financial or personal interest.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981; amd. Sec. 1, Ch. 293, L. 1995.

76-3-612. Abstract of title required for review process. (1) The subdivider shall submit with the final plat a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981.

76-3-613. Index of plats to be kept by county clerk and recorder. (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.

76-3-614. Correction of recorded plat. When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.

76-3-615 through 76-3-619 reserved.

76-3-620. Review requirements — written statement. In addition to the requirements of 76-3-604 and 76-3-609, a governing body may not deny or condition a subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the subdivision denial or condition imposition. The statement must include:

(1) the reason for the denial or condition imposition;

(2) the evidence that justifies the denial or condition imposition; and

(3) information regarding the appeal process for the denial or condition imposition.

History: En. Sec. 2, Ch. 224, L. 1995.

76-3-621. Park dedication requirement. (1) Except as provided in subsections (2), (3), and (6), a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a master plan under Title 76, chapter 1, or pursuant to zoning regulations under Title 76, chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the plans or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).

(7) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

History: **En. Sec. 9, Ch. 468, L. 1995.**

Cross-References

Sale, lease, or exchange of dedicated park lands, 7-16-2324.

76-3-622 through 76-3-624 reserved.

76-3-625. Violations — actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

History: **En. Sec. 10, Ch. 468, L. 1995.**

CHAPTER 4

STATE REGULATION OF SUBDIVISIONS

Part 1 — Sanitation in Subdivisions

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76-4-1112. Required provisions in subdivision sales contracts.
76-4-1113. Required provisions for protection of purchasers and lessees.
76-4-1114. Restriction on advertising.
76-4-1115. Misdemeanors enumerated.
76-4-1116. Enforcement procedures — hearing.
76-4-1117. Accrual of cause of action.

Part 12 — In-State Sales of Out-of-State Subdivisions
(Repealed. Sec. 46, Ch. 481, L. 1997)

Part 1
Sanitation in Subdivisions

Part Cross-References
Solid waste disposal exception, 75-10-214.
Water use — ground water, Title 85, ch. 2, part 5.

76-4-101. Public policy. It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation, and wildlife.

History: En. Sec. 148, Ch. 197, L. 1967; amd. Sec. 1, Ch. 509, L. 1973; R.C.M. 1947, 69-5001.

76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of environmental review.

(2) "Department" means the department of environmental quality.

(3) "Extension of public sewage disposal system" means a sewer line that connects two or more sewer service lines to a sewer main.

(4) "Extension of public water supply system" means a water line that connects two or more water service lines to a water main.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(6) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(8) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(9) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

(10) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(11) "Sewer service line" means a sewer line that connects a single building or living unit to a public sewer system or extension of a system.

(12) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(13) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

(14) "Water service line" means a water line that connects a single building or living unit to a public water system or extension of a system.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 1, Ch. 490, L. 1985; amd. Sec. 1, Ch. 592, L. 1985; amd. Sec. 240, Ch. 418, L. 1995.

76-4-103. What constitutes subdivision. A subdivision shall comprise only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not. The rental or lease of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 2, Ch. 592, L. 1985.

76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and must be related to size of lots; contour of land; porosity of soil; ground water level; distance from lakes, streams, and wells; type and construction of private water and sewage facilities; and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules must provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under

subsection (4) that the local department or board is competent to review these divisions of land:

(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(b) divisions of land proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat.

(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications are submitted to the department, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect

at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a certification that a division of land is not subject to sanitary restrictions under this part unless it provides a written statement to the applicant detailing the circumstances of the certification denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(part); amd. Sec. 2, Ch. 378, L. 1985; amd. Sec. 2, Ch. 490, L. 1985; amd. Sec. 1, Ch. 224, L. 1995; amd. Sec. 19, Ch. 471, L. 1995.

76-4-105. Lot fees — subdivision program funding. (1) The department shall adopt rules setting forth fees that do not exceed actual costs to the department in reviewing plats and subdivisions. The rules must provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the state special revenue fund or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction. The fees must be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees to the local governing body, as provided in 76-4-128.

(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

(4) Fees collected by the department under this section must be deposited in the account in the state special revenue fund provided for in 76-4-132.

History: Ap. p. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; Sec. 69-5005, R.C.M. 1947; Ap. p. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(part), 69-5005(part); amd. Sec. 1, Ch. 553, L. 1981; amd. Sec. 33, Ch. 281, L. 1983; amd. Sec. 1, Ch. 696, L. 1983; amd. Sec. 3, Ch. 490, L. 1985; amd. Sec. 3, Ch. 592, L. 1985; amd. Sec. 1, Ch. 708, L. 1985; (5)En. Sec. 2, Ch. 708, L. 1985; amd. Sec. 9, Ch. 645, L. 1991; amd. Sec. 1, Ch. 514, L. 1993.

76-4-106. Cooperation with other governmental agencies. (1) The reviewing authority may require the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and municipal officers and employees, including local health officers and sanitarians, shall cooperate with the reviewing authority in

furthering the purposes of this part so far as is practical and consistent with their own duties.

(3) A local reviewing authority without a registered sanitarian or a registered professional engineer to conduct a review under this part may contract with another local reviewing authority for the services of its registered sanitarian or registered professional engineer to conduct the review.

History: En. Sec. 8, Ch. 509, L. 1973; R.C.M. 1947, 69-5009; amd. Sec. 4, Ch. 490, L. 1985.

76-4-107. Authority to inspect and monitor — certification. (1) In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the reviewing authority whenever any water supply or sewage disposal system is proposed or has been constructed may:

(a) enter upon any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the reviewing authority, to inspect such systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(b) require as a condition of approval that records concerning the operation of a sewage disposal or water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

(2) The reviewing authority shall require certification from a registered professional engineer that a public water supply system or a public sewage disposal system has been constructed according to approved specifications.

History: En. 69-5010 by Sec. 1, Ch. 557, L. 1977; R.C.M. 1947, 69-5010; amd. Sec. 5, Ch. 490, L. 1985; amd. Sec. 1, Ch. 294, L. 1987.

76-4-108. Enforcement. (1) If the reviewing authority has reason to believe that a violation of this part or a rule made under it has occurred, it may have written notice served personally or by mail to the last-known address of the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. For the purpose of this part, service by mail is complete on the date of mailing. The alleged violator may, no later than 30 days after service of a notice under this section, request a hearing before the reviewing authority or the board. If a request is filed, a hearing shall be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority shall accept legal responsibility for its actions under this part.

(5) If a violation of this part is found to exist, a reviewing authority may revoke a certificate of approval and reimpose sanitary restrictions on a subdivision, following a hearing before the reviewing authority under this section.

History: En. Sec. 6, Ch. 509, L. 1973; R.C.M. 1947, 69-5007; amd. Sec. 6, Ch. 490, L. 1985; (5)En. Sec. 16, Ch. 490, L. 1985.

76-4-109. Penalties. (1) A person violating any provision of this part, except 76-4-122(1), or any rule or order issued under this part is guilty of an offense and subject to a fine of not to exceed $1,000.

(2) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule or order issued under this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.

History: En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part); amd. Sec. 7, Ch. 490, L. 1985.

Cross-References

Misdemeanor defined, 45-2-101.

76-4-110. Additional remedies available. This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

History: En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part).

76-4-111. Exemption for certain condominiums and subdivisions. (1) Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units for rental or lease, the construction of the same or a fewer number of condominium units on that parcel is not subject to the provisions of this part, provided that no new extension of a public water supply system or a public sewage disposal system is required as defined in this part.

(3) Subdivisions located within master planning areas and first- or second-class municipalities that will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste are not subject to the provisions of this part; except that, if the municipal facilities for water supply or sewage disposal to serve the subdivision constitute either an extension of a public water supply system or a public sewage disposal system, the subdivision must be reviewed in accordance with the provisions of 76-4-105, 76-4-124, and 76-4-127.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 4, Ch. 592, L. 1985; (3)En. Sec. 9, Ch. 592, L. 1985.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

76-4-112 through 76-4-120 reserved.

76-4-121. Restrictions on subdivision activities. Until the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste or that the reviewing authority has indicated that the subdivision is subject to no restrictions, a person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(4); amd. Sec. 8, Ch. 490, L. 1985.

76-4-122. Filing or recording of noncomplying map or plat prohibited. (1) The county clerk and recorder shall not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority, and the reviewing authority has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction whenever reviewing authority approval is necessary; or

(b) whenever reviewing authority approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside a master planning area or a class 1 or class 2 municipality and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste.

History: (1)En. Sec. 151, Ch. 197, L. 1967; R.C.M. 1947, 69-5004; (2)En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(7), 69-5004; amd. Sec. 9, Ch. 490, L. 1985; amd. Sec. 5, Ch. 592, L. 1985.

Cross-References

Classification of municipalities, 7-1-4111.

76-4-123. Review and approval required outside master planning areas and class 1 and class 2 municipalities. Outside master planning areas adopted pursuant to chapter 1 and class 1 and class 2 municipalities as provided in 76-4-124, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the reviewing authority has indicated that the subdivision is subject to no sanitary restriction.

History: **En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(1); amd. Sec. 10, Ch. 490, L. 1985; amd. Sec. 6, Ch. 592, L. 1985.**

Cross-References

Classification of municipalities, 7-1-4111.

76-4-124. Type of review and approval required within master planning areas and class 1 and class 2 municipalities. (1) Within master planning areas adopted pursuant to chapter 1 or within a class 1 or class 2 municipality as defined in 7-1-4111, a subdivision, including a development of condominiums, is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in 76-4-127. In this case, reviewing authority approval is not necessary.

(2) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain reviewing authority approval as provided in 76-4-122(2)(a).

History: **En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(2), (3); amd. Sec. 11, Ch. 490, L. 1985; amd. Sec. 7, Ch. 592, L. 1985.**

76-4-125. Review of development plans — land divisions excluded from review. (1) Plans and specifications of a subdivision, as defined in this part, must be submitted to the reviewing authority, and the reviewing authority shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the reviewing authority a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the reviewing authority.

(b) The reviewing authority shall give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that a dwelling or structure requiring water or sewage disposal may not be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule; and

(d) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer, if:

(i) the remainder is served by a public or multifamily sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the transfer of the parcel to be segregated from the remainder referenced in subsection (2)(d)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(8), (10); amd. Sec. 12, Ch. 490, L. 1985; amd. Sec. 1, Ch. 289, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 289 in (2), after "divisions", inserted "or parcels"; inserted (2)(d) exempting from development plan review a parcel served by multifamily sewage system or parcel 1 acre or larger that has an existing well and septic system; inserted (3) authorizing local health officer to require that parcel include acreage or features to accommodate replacement drainfield; and made minor changes in style.

76-4-126. Right to hearing. Upon denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by such denial may request a hearing before the board or the reviewing authority. Such hearings will be held pursuant to the Montana Administrative Procedure Act.

History: En. Sec. 5, Ch. 509, L. 1973; R.C.M. 1947, 69-5006; amd. Sec. 13, Ch. 490, L. 1985.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

76-4-127. Notice of certification that water and waste services will be provided by local government. (1) When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving preliminary plat approval under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision.

(2) The notice of certification shall include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat where a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) a copy of the master plan, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(part); amd. Sec. 14, Ch. 490, L. 1985; amd. Sec. 8, Ch. 592, L. 1985.

76-4-128. Delegation of department review to local government. (1) The department shall delegate to a local government the authority to review a subdivision under this part when the subdivision involves five or fewer parcels and the local government has qualified personnel to adequately review the water supply and sewage and solid waste disposal facilities proposed for the subdivision.

(2) When a local government has conducted a review of a subdivision containing five or fewer parcels pursuant to this section, it shall advise the department of its recommendation for approval or disapproval of the subdivision. The department shall, within 10 days after receiving the recommendation of the local government, make a final decision on the subdivision.

(3) In delegating authority pursuant to this section, the department shall enter into an agreement with the local government wherein the department shall agree to transfer not less than $15 of the fee per parcel collected pursuant to 76-4-105 to the local government for the review of subdivisions containing five or fewer parcels.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(5); amd. Sec. 2, Ch. 553, L. 1981.

76-4-129. Joint application form and concurrent review. (1) Within 90 days after July 1, 1977, the department shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity.

(2) The review required by this part and the provisions of chapter 3 shall occur concurrently.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(11); amd. Sec. 3, Ch. 236, L. 1981; amd. Sec. 6, Ch. 274, L. 1981.

76-4-130. Deviation from plans or specifications. A person may not construct or use a facility which deviates from the plans and specifications filed with the reviewing authority until the reviewing authority has approved the deviation.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(9); amd. Sec. 15, Ch. 490, L. 1985.

76-4-131. Applicability of public water supply laws. The exclusions provided for in 76-4-121 through 76-4-130 shall not relieve any person of the duty to comply with the requirements of Title 75, chapter 6.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(6).

76-4-132. Special revenue account — deposit and disbursement of lot fees. (1) All lot fees collected under 76-4-105 must be deposited in an account in the state special revenue fund for implementation of the subdivision review program as provided in this part.

(2) Funds in the account established in subsection (1) may be used only to pay department costs of implementation of the subdivision review program as provided in this part.

History: En. Sec. 2, Ch. 514, L. 1993.

76-4-133 and 76-4-134 reserved.

76-4-135. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: **En. Sec. 3, Ch. 471, L. 1995.**

Parts 2 through 10 reserved

Part 11

Out-of-State Sales of In-State Subdivisions

76-4-1101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Blanket encumbrance" shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, construction lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Subdivision" and "subdivided lands" mean any tract of land which is hereafter divided into five or more parcels, a parcel of which is less than 5 acres in size, and which is offered for sale or lease outside the state of Montana.

History: **(1)En. Sec. 9, Ch. 191, L. 1963; Sec. 67-2109, R.C.M. 1947; (2) thru (4)En. Sec. 1, Ch. 191, L. 1963; amd. Sec. 321, Ch. 350, L. 1974; Sec. 67-2101, R.C.M. 1947; R.C.M. 1947, 67-2101, 67-2109; amd. Sec. 6, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.**

76-4-1102. Rules. The board may adopt rules necessary for the enforcement of this part.

History: **En. Sec. 2, Ch. 191, L. 1963; amd. Sec. 322, Ch. 350, L. 1974; R.C.M. 1947, 67-2102.**

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

76-4-1103. Notice of intention to offer subdivided lands. Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent, or the subdivider shall notify the board in writing of his intention to sell or lease such offering.

History: **En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(1).**

76-4-1104. Contents of notice. The notice of intention shall contain the following information:

(1) the name and address of the owner;

(2) the name and address of the subdivider;

(3) the legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads;

(4) a true statement of the conditions of the title to the land, particularly including all encumbrances thereon;

(5) a true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used;

(6) a true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas, and telephone facilities;

(7) copies of any advertising, information, promotion brochures, or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the property or an interest therein when the material is or might be circulated outside of this state;

(8) such other information as the owner, his agent, or the subdivider may desire to present.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(2).

76-4-1105. Fee for filing notice of intention. A filing fee of $50 shall accompany the notice of intention provided for in 76-4-1103.

History: En. Sec. 4, Ch. 191, L. 1963; R.C.M. 1947, 67-2104.

76-4-1106. Additional information required by board. After receiving the notice of intention, the board may require additional information concerning the project as it considers necessary, for which it may prepare a questionnaire for the owner, his agent, or the subdivider to answer.

History: En. Sec. 5, Ch. 191, L. 1963; amd. Sec. 324, Ch. 350, L. 1974; R.C.M. 1947, 67-2105.

76-4-1107. Fee for filing board questionnaire. When the questionnaire provided for in 76-4-1106 is filed, the person filing the questionnaire shall pay to the department a filing fee of $100.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part).

76-4-1108. Disposition of fees and charges. (1) Fees and charges provided for by this part shall be paid to the department and deposited by it with the state treasurer.

(2) The state treasurer shall place 5% of these fees and charges in the general fund and 95% of these fees and charges in the state special revenue fund.

(3) Fees deposited in the state special revenue fund may be used to pay claims for expense incurred in the administration of this part when the claims have been approved as provided by law.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part); amd. Sec. 1, Ch. 277, L. 1983.

76-4-1109. Investigation of subdivisions. The board may investigate any subdivision being offered for sale or lease under the provisions of this part. For the purpose of an investigation, the board may:

(1) use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United

States department of veterans affairs, or any other agency having comparable duties and functions in relation to subdivisions or property therein;

(2) require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision;

(3) require evidence of compliance with the requirements of appropriate authorities;

(4) require an inspection of the subdivision to be made.

History: **En. Sec. 7, Ch. 191, L. 1963; amd. Sec. 326, Ch. 350, L. 1974; R.C.M. 1947, 67-2107.**

76-4-1110. Inspection of records by board. (1) Records of the sale or lease of parcels within a subdivision subject to the provisions of this part shall be subject to inspection by the board.

(2) The board shall be notified of any change of address affecting the location of the owner's, subdivider's, or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

History: **En. Sec. 13, Ch. 191, L. 1963; amd. Sec. 330, Ch. 350, L. 1974; R.C.M. 1947, 67-2113.**

76-4-1111. Notice of multiple sales or leases to one purchaser or lessee. When five or more lots or parcels within a subdivision subject to the provisions of this part are optioned, leased, or sold to another or when an interest therein is acquired by one owner, lessee, or optionee, the board shall be notified by the parties to the transaction.

History: **En. Sec. 12, Ch. 191, L. 1963; amd. Sec. 329, Ch. 350, L. 1974; R.C.M. 1947, 67-2112.**

76-4-1112. Required provisions in subdivision sales contracts. Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this part shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

History: **En. Sec. 11, Ch. 191, L. 1963; R.C.M. 1947, 67-2111.**

76-4-1113. Required provisions for protection of purchasers and lessees. It is unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(1) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the board until:

(a) (i) the title or other interest contracted for, whether it be title of record, equitable, or other interest, is delivered to such purchaser or lessee; and

(ii) a proper release is obtained from any such blanket encumbrance; or

(b) either the owner, subdivider, purchaser, or lessee defaults in his undertaking, in which event the money shall be paid to the party who is not in default and is entitled thereto.

(2) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the board until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(3) A bond in the amount of $2,500 to the state of Montana is furnished to the board for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to the terms as may be approved by the board, which shall provide for the return of moneys paid or advanced by any purchaser or lessee for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained. However, if the purchaser or lessee, by reason of default, is not entitled to the return of the money or any portion thereof, then the bond shall be exonerated to the extent of the amount of the money to which such purchaser or lessee is not entitled.

History: En. Sec. 10, Ch. 191, L. 1963; amd. Sec. 328, Ch. 350, L. 1974; R.C.M. 1947, 67-2110.

76-4-1114. Restriction on advertising. It is unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the board as provided for in this part.

History: En. Sec. 8, Ch. 191, L. 1963; amd. Sec. 327, Ch. 350, L. 1974; R.C.M. 1947, 67-2108.

76-4-1115. Misdemeanors enumerated. The following acts are misdemeanors:

(1) the willful violation of or failure to comply with any of the provisions of this part;

(2) the willful violation, failure, omission, or neglect to obey, observe, or comply with any order, permit, decision, demand, or requirement of the board;

(3) the offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this part.

History: En. Sec. 16, Ch. 191, L. 1963; amd. Sec. 332, Ch. 350, L. 1974; R.C.M. 1947, 67-2116; amd. Sec. 12, Ch. 266, L. 1979.

Cross-References

Misdemeanor — penalty when none specified, 46-18-212.

76-4-1116. Enforcement procedures — hearing. (1) When in the opinion of the board a person has violated or is violating or is about to violate any of the provisions of this part, the board may order the person to desist and refrain from doing so.

(2) If an examination of the project shows that the sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees of lots or parcels in a subdivision, the board may issue an order prohibiting the sale or lease, or either, of the property in this state.

(3) If, after such an order is made, a request for a hearing by the board is filed in writing and a hearing is not held within 60 days thereafter, the order is rescinded.

History: En. Sec. 14, Ch. 191, L. 1963; amd. Sec. 331, Ch. 350, L. 1974; R.C.M. 1947, 67-2114.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

76-4-1117. Accrual of cause of action. (1) For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal, involving any violation of this part, the cause of action shall be considered to have accrued not earlier than the time of recording with the county clerk and recorder of the county in which the property was sold or leased in violation of this part, which recording describes a lot or parcel so wrongfully sold or leased.

(2) This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

History: En. Sec. 15, Ch. 191, L. 1963; R.C.M. 1947, 67-2115; amd. Sec. 13, Ch. 266, L. 1979.

Part 12

In-State Sales of Out-of-State Subdivisions (Repealed. Sec. 46, Ch. 481, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

76-4-1201. En. Sec. 20, Ch. 97, L. 1969; R.C.M. 1947, 67-2136.

76-4-1202. En. Sec. 1, Ch. 97, L. 1969; amd. Sec. 333, Ch. 350, L. 1974; R.C.M. 1947, 67-2117; amd. Sec. 7, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

76-4-1203. En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(1); amd. Sec. 8, Ch. 497, L. 1979.

76-4-1204. En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(4).

76-4-1205. En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(6).

76-4-1206. En. Secs. 10, 11, Ch. 97, L. 1969; amd. Secs. 340, 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(5)(b), 67-2127(1).

76-4-1207. En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(2), (3).

76-4-1208. En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1209. En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1210. En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1211. En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part).

76-4-1212. En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part); amd. Sec. 1, Ch. 277, L. 1983.

76-4-1213. En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(5)(c); amd. Sec. 1, Ch. 277, L. 1983.

76-4-1214 through 76-4-1220 reserved.

76-4-1221. En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1222. En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part); amd. Sec. 8, Ch. 351, L. 1979.

76-4-1223. En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1224. En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1225. En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(7).

76-4-1226. En. Sec. 4, Ch. 97, L. 1969; R.C.M. 1947, 67-2120.

76-4-1227. En. Secs. 5, 10, Ch. 97, L. 1969; amd. Sec. 335, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(part), 67-2126(5)(a).

76-4-1228. En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(b), (f), (g), (h), (i), (j), (k), (l).

76-4-1229. En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(d), (e).

76-4-1230. En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(a), (c), (m), (n), (o).

76-4-1231. En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(2).

76-4-1232. En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(3).

76-4-1233. En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(1).

76-4-1234. En. Secs. 6, 10, Ch. 97, L. 1969; amd. Secs. 336, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(2), 67-2126(2).

76-4-1235. En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(3).

76-4-1236. En. Sec. 7, Ch. 97, L. 1969; amd. Sec. 337, Ch. 350, L. 1974; R.C.M. 1947, 67-2123.

76-4-1237. En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).

76-4-1238. En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).

76-4-1239. En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(4).

76-4-1240. En. Sec. 9, Ch. 97, L. 1969; amd. Sec. 339, Ch. 350, L. 1974; R.C.M. 1947, 67-2125.

76-4-1241. En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(1).

76-4-1242. En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(2).

76-4-1243. En. Sec. 13, Ch. 97, L. 1969; amd. Sec. 343, Ch. 350, L. 1974; amd. Sec. 55, Ch. 359, L. 1977; R.C.M. 1947, 67-2129.

76-4-1244. En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(3).

76-4-1245. En. Sec. 15, Ch. 97, L. 1969; R.C.M. 1947, 67-2131; amd. Sec. 14, Ch. 266, L. 1979.

76-4-1246. En. Sec. 18, Ch. 97, L. 1969; R.C.M. 1947, 67-2134.

76-4-1247. En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(a), (b), (e).

76-4-1248. En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(c), (d).

76-4-1249. En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(f).

76-4-1250. En. Sec. 17, Ch. 97, L. 1969; R.C.M. 1947, 67-2133.

76-4-1251. En. Sec. 19, Ch. 97, L. 1969; amd. Sec. 344, Ch. 350, L. 1974; R.C.M. 1947, 67-2135.

CHAPTER 5

FLOODPLAIN AND FLOODWAY MANAGEMENT

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Chapter Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Flood control by water and sewer districts, 7-13-2218.

Flood Control Act of 1954 — distribution of revenue to counties, 17-3-231, 17-3-232.

Easements relating to flooding, 70-17-101.

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Renewable resource development program — flood control, 85-1-602.

Flood control by conservancy districts, 85-9-102.

Part 1

General Provisions

76-5-101. Findings. The people of the state of Montana find that:

(1) recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(2) the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

History: En. Sec. 1, Ch. 393, L. 1971; R.C.M. 1947, 89-3501.

76-5-102. Policy and purposes. (1) The policy and purposes of parts 1 through 4 of this chapter are to:

(a) guide development of the floodway areas of this state consistent with the enumerated findings;

(b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;

(c) provide state coordination and technical assistance to local units in management of floodway areas;

(d) coordinate federal, state, and local management activities for floodway areas;

(e) encourage local governmental units to manage flood-prone lands, including the adoption, enforcement, and administration of land use regulations; and

(f) provide the department of natural resources and conservation with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of parts 1 through 4 to:

(a) restrict or prohibit uses that are dangerous to health or safety of property in times of flood or that cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities that serve the uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands that are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury.

History: En. Sec. 2, Ch. 393, L. 1971; amd. Sec. 194, Ch. 253, L. 1974; amd. Sec. 1, Ch. 271, L. 1974; R.C.M. 1947, 89-3502; amd. Sec. 241, Ch. 418, L. 1995.

76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the department.

(5) "Designated floodway" means a floodway whose limits have been designated and established by order of the department.

(6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(7) "Establish" means construct, place, insert, or excavate.

(8) "Flood" means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway.

(9) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.

(10) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.

(11) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause.

(13) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(14) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(15) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(16) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.

(b) Upon order of the department, the term also includes any particular depression that would not otherwise be within the definition of watercourse.

History: En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part); amd. Sec. 1, Ch. 428, L. 1981; amd. Sec. 242, Ch. 418, L. 1995.

76-5-104. Presumption that depression is watercourse. In the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse.

History: En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part).

76-5-105. Authority to enter and investigate lands or waters. (1) The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by parts 1 through 4 of this chapter. Unless written consent is obtained, however, the department or the responsible political subdivision shall provide written notice of its entry by personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the department or the responsible political subdivision shall affix a copy of the notice to one or more conspicuous places on the property.

(2) An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department or the responsible political subdivision either on its own initiative, on the written request of three titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision. Upon the request of an owner, owner's agent, lessee, or lessee's agent whose lands will be entered to undertake the investigation, the department or the responsible political subdivision shall release the names and addresses of the persons or political subdivision requesting the investigation.

History: En. Sec. 9, Ch. 393, L. 1971; amd. Sec. 201, Ch. 253, L. 1974; amd. Sec. 8, Ch. 271, L. 1974; R.C.M. 1947, 89-3509; amd. Sec. 1, Ch. 382, L. 1985.

76-5-106. Exemption for small drainage area. Parts 1 through 4 of this chapter do not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the watercourse or drainway, either within or outside the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the department.

History: En. Sec. 10, Ch. 393, L. 1971; amd. Sec. 9, Ch. 271, L. 1974; R.C.M. 1947, 89-3510; amd. Sec. 243, Ch. 418, L. 1995.

76-5-107. Federal supremacy. Parts 1 through 4 do not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

76-5-108. Permit construed as added requirement. The granting of a permit under parts 1 through 4 of this chapter does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

76-5-109. Other legal remedies preserved — immunity. (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) When it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3) The use of any one of the remedies or powers given to the department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state or the department.

History: (1), (2), (4)En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; Sec. 89-3514, R.C.M. 1947; (3)En. Sec. 15, Ch. 393, L. 1971; amd. Sec. 205, Ch. 253, L. 1974; Sec. 89-3515, R.C.M. 1947; R.C.M. 1947, 89-3514(part), 89-3515; amd. Sec. 244, Ch. 418, L. 1995.

76-5-110. Penalties for violation. Any person who violates 76-5-401 through 76-5-404 shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than $100 or be imprisoned in the county jail for not more than 10 days or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

History: **En. Sec. 13, Ch. 393, L. 1971; R.C.M. 1947, 89-3513.**

Part 2

Role of State Agencies

76-5-201. Program for delineation of floodplains and floodways. (1) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for each watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for the acquisition of data.

(2) Before the department establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation must include but is not limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and other data that is considered appropriate;

(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

History: **En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(1); amd. Sec. 245, Ch. 418, L. 1995.**

76-5-202. Designation of floodplains and floodways. (1) When sufficient data has been acquired by the department, the department shall establish, by order after a public hearing, the designated floodplain within which a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the department shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations must be based upon reasonable hydrological certainty. Designations made according to a flood hazard boundary map prepared by the federal emergency management agency have a rebuttable presumption of reasonable hydrological certainty.

(4) The department shall record all designated floodplains or designated floodways in the office of the county clerk and recorder of each county in which those floodplains or floodways are found.

History: **En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 1, Ch. 160, L. 1987; amd. Sec. 246, Ch. 418, L. 1995.**

76-5-203. Alteration of floodplains or floodways. The department may alter the floodplains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it.

History: **En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 247, Ch. 418, L. 1995.**

76-5-204. What constitutes notice. Notice of a hearing or order of the department establishing or altering the floodplains or floodways must be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved. The last publication of the notice may not be less than 10 days prior to the date set for the hearing or the effective date of the order.

History: **En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 248, Ch. 418, L. 1995.**

76-5-205. Furnishing of material to local governments. (1) When the designated floodplain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this chapter, adopted rules of the department, and suggested minimum standards adopted by the department.

(2) These standards and rules must reflect gradations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules, the department shall consider local input from the affected political subdivisions.

History: **En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 249, Ch. 418, L. 1995.**

76-5-206. Powers and duties of department relative to obstructions. (1) When an obstruction to a designated floodway established under 76-5-202 through 76-5-205 has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal must be borne by the department.

(2) When, after investigation, notice, and hearing, an order has been issued by the department to the owner of an obstruction not exempt under 76-5-401 through 76-5-404 for its removal or repair and the order is not complied with within a reasonable time as may be prescribed or if the owner cannot be found or determined, the department may make the removal or repairs or cause the removal or repairs to be made. The cost of the removal or repairs must be borne by the owner and are recoverable in the same manner as debts are recoverable by law.

History: **En. Sec. 8, Ch. 393, L. 1971; amd. Sec. 5, Ch. 294, L. 1973; amd. Sec. 200, Ch. 253, L. 974; amd. Sec. 7, Ch. 271, L. 1974; R.C.M. 1947, 89-3508; amd. Sec. 250, Ch. 418, L. 1995.**

76-5-207. Floodway obstruction removal fund. The state treasurer shall establish the floodway obstruction removal fund and credit to the fund for the removal of obstructions as provided in 76-5-206(1) such money specifically appropriated by the legislature. The department may allocate money from the floodway obstruction removal fund for purposes provided in 76-5-206(1).

History: **En. Sec. 12, Ch. 393, L. 1971; amd. Sec. 203, Ch. 253, L. 1974; R.C.M. 1947, 89-3512.**

76-5-208. Orders and rules. (1) The department may adopt orders and rules that are necessary to implement parts 1 through 4 of this chapter. All orders and rules must be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order may not become effective less than 10 days after a hearing is held relating to the order.

(3) In addition to any requirement imposed by 76-5-202 through 76-5-205, when an order is issued that affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing must be mailed to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined.

History: **En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part); amd. Sec. 251, Ch. 418, L. 1995.**

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

76-5-209. Appeal from order. (1) A person aggrieved by any order of the department issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after the order's effective date. Service of notice of the appeal must be made upon the department.

(2) If an appeal is taken, enforcement of the order is stayed pending the outcome of the appeal.

History: **En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part); amd. Sec. 252, Ch. 418, L. 1995.**

Cross-References

Contested cases under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Part 3

Role of Local Government

Part Cross-References

Flood Control Act of 1954 — distribution of revenue to counties, 17-3-231, 17-3-232.

Master plan notation of flood control measures, 76-1-601.

76-5-301. Land use regulations. (1) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations that meet or exceed the minimum standards of the department. The regulations may include, for the purposes of floodplain management only, floodplain management regulations within sheetflood areas as determined by the federal emergency management agency.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the department under 76-5-202 through 76-5-205, and an artificial obstruction or nonconforming use may not be established by any person within the designated floodplain or the designated floodway unless specifically authorized by the department.

(3) A political subdivision that has failed to adopt land use regulations that meet or exceed the minimum standards of the department within the 6-month period may subsequently adopt regulations, and if approved by the department, the regulations are effective within the designated floodplain or floodway and must be administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the department may shorten the 6-month period upon notification to the political subdivision and publication of a notice of the revised period in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(3) thru (5); amd. Sec. 1, Ch. 74, L. 1983; amd. Sec. 253, Ch. 418, L. 1995.

76-5-302. Substitution of local control for state permit system. (1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter, permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions that meet or exceed the minimum standards of the department and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the department, a permit from the department is not required.

(2) However, if the department determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted under parts 1 through 4, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the department must be enforced by the department until the department determines that the political subdivision will comply.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part); amd. Sec. 254, Ch. 418, L. 1995.

Part 4
Use of Floodplains and Floodways

Part Cross-References

Easements relating to flooding, 70-17-101.

76-5-401. Permissible open-space uses. The following open-space uses shall be permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(1) agricultural uses;

(2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;

(3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;

(4) forestry, including processing of forest products with portable equipment;

(5) residential uses such as lawns, gardens, parking areas, and play areas;

(6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(2).

Cross-References

Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

76-5-402. Permissible uses within floodplain but outside floodway. Permits must be granted for the following uses within that portion of the floodplain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) the structures meet the minimum standards adopted by the department;

(b) residential structures are constructed on fill such that the lowest floor elevation (including basements) is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed on fill as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. The floodproofing must be in accordance with the minimum standards adopted by the department.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(3); amd. Sec. 255, Ch. 418, L. 1995.

76-5-403. Prohibited uses within floodway. The following nonconforming uses shall be prohibited within the designated floodway:

(1) a building for living purposes or place of assembly or permanent use by human beings;

(2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;

(3) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(4).

Cross-References

Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

76-5-404. Artificial obstructions and nonconforming uses. (1) An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under 76-5-301(1) and (2) and not exempt under 76-5-401 through 76-5-403 or subsection (2) or (3) of this section is a public nuisance unless a permit has been obtained for the artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the department has enforced a designated floodplain or a designated floodway under 76-5-301(1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

History: En. Secs. 5, 6, Ch. 393, L. 1971; amd. Secs. 3, 4, Ch. 294, L. 1973; amd. Secs. 197, 198, Ch. 253, L. 1974; amd. Secs. 4, 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3505, 89-3506(1); amd. Sec. 256, Ch. 418, L. 1995.

76-5-405. Variance for obstruction or nonconforming use. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses that would otherwise violate 76-5-401 through 76-5-404. The application for the permit must be submitted to the department or the responsible political subdivision and contain the information that the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated floodplains or designated floodways are conclusively considered to

have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after a time that the department or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to 76-5-406 and this section.

(3) An application for a permit must be accompanied by a nonrefundable application fee of $10, which the state treasurer shall credit to the floodway obstruction removal fund.

(4) The department or the responsible political subdivision may make a part of the permit any reasonable conditions that it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part); amd. Sec. 257, Ch. 418, L. 1995.

76-5-406. Criteria to be considered in connection with variance request. In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the department:

(1) the danger to life and property by water that may be backed up or diverted by the obstruction or use;

(2) the danger that the obstruction or use will be swept downstream to the injury of others;

(3) the availability of alternate locations;

(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;

(5) the permanence of the obstruction or use;

(6) the anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; and

(7) other factors in harmony with the purpose of parts 1 through 4 of this chapter.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part); amd. Sec. 258, Ch. 418, L. 1995.

Parts 5 through 10 reserved

Part 11

Water Conservation and Flood Control Projects

Part Cross-References

Flood Control Act of 1954 — distribution of revenue to counties, 17-3-231, 17-3-232.

Eminent domain for flooding from construction of dam, 70-30-104.

Flood control function of conservancy districts, 85-9-102.

76-5-1101. Water conservation and flood control projects authorized. (1) Cities, towns, or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town, or county:

(a) for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of floodwater; and

(b) for the conservation, development, storage, distribution, drainage, and utilization of water for purposes beneficial to the district.

(2) Purposes beneficial to the district include but are not limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use, and pollution abatement whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners, or other governing body, be conducive to public convenience and welfare.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1102. Types of projects. Such cities, towns, or counties in accordance with the provisions of this part, individually, jointly, or severally or in cooperation with the federal or state government or any department or agency thereof and with each other, may deepen, widen, straighten, alter, change, divert, or otherwise improve the watercourses within or without their limits by constructing levees, dikes, embankments, structures, impounding reservoirs, or conduits and improve, widen, and establish streets, alleys, and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this part.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1103. Water conservation and flood control activities declared public purpose. Such water conservation and flood control activities and their establishment, construction, operation, and maintenance as authorized by this part are declared to be for the protection of the tax base of the city, town, or county; for the protection of public roads, lands, and improvements; for the protection of the public health, sanitation, and safety; and for improvement of the general welfare.

History: En. Sec. 2, Ch. 272, L. 1965; amd. Sec. 2, Ch. 284, L. 1967; R.C.M. 1947, 89-3302.

76-5-1104. Construction of part. (1) This part and each section thereof shall be construed as granting additional power without limiting the power already existing in cities, towns, and counties.

(2) The provisions of this part and the methods of organization of water conservation and flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects, and it is hereby declared that no provision hereof shall be amended or repealed by implication or otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

History: (1)En. Sec. 13, Ch. 272, L. 1965; Sec. 89-3313, R.C.M. 1947; (2)En. Sec. 12, Ch. 284, L. 1967; Sec. 89-3314, R.C.M. 1947; R.C.M. 1947, 89-3313, 89-3314.

76-5-1105. Division of work into parts. Whenever any city, town, or county has begun a water conservation or flood control system, or both, under this part, the council, board, or other governing body shall have the power to divide the work into parts, sections, or districts; to omit parts of said work; and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done, or made.

History: En. Sec. 11, Ch. 272, L. 1965; amd. Sec. 11, Ch. 284, L. 1967; R.C.M. 1947, 89-3311.

76-5-1106. Requirements to change project boundaries. The boundaries of a project once established shall not be extended without the vote of a majority of the electors residing in the area proposed to be annexed. Such electors are to be determined, and such election is to be held in accordance with the provisions of 76-5-1117.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1107. Direction and construction responsibility of state or federal government — local role. This part contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town, or county provides and assumes the cost of necessary right-of-way over and above such contributions in that regard as the federal government may choose to make. Under such limitation, all appropriate portions of this part shall apply.

History: En. Sec. 6, Ch. 272, L. 1965; amd. Sec. 5, Ch. 284, L. 1967; R.C.M. 1947, 89-3306.

76-5-1108. Acquisition of property. (1) Cities, towns, and counties may acquire by gift, purchase, or condemnation and appropriation private property within the limits of the project, including the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part.

(2) All provisions of the laws of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof insofar as applicable.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967; R.C.M. 1947, 89-3303.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

76-5-1109. Contracts for use of railroads and highways. A city, town, or county may contract with a railroad company or with the department of transportation for the use of railroad or highway rights-of-way and embankments and other railroad or highway property which can be utilized by the city, town, or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for a period not exceeding 99 years.

History: En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967; amd. Sec. 207, Ch. 316, L. 1974; R.C.M. 1947, 89-3310; amd. Sec. 3, Ch. 512, L. 1991.

76-5-1110. Cooperation with governmental, public, and private agencies. (1) Cities, towns, and counties may in accordance with the provisions of this part:

(a) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and

(b) cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, and use of water.

(2) Cities, towns, and counties may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Secs. 4, 7, Ch. 272, L. 1965; amd. Secs. 4, 6, Ch. 284, L. 1967; R.C.M. 1947, 89-3304, 89-3307(part).

76-5-1111. Apportionment of costs. (1) The cost of all right-of-way acquired by purchase or condemnation together with any other property rights which may be required in furtherance of such projects, may be borne by the city, town, or county.

(2) The work of actual construction and the cost thereof may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965; R.C.M. 1947, 89-3305.

76-5-1112. Sources of funds for cost of acquiring right-of-way and other costs. (1) The council, board, or governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right-of-way or the operation and maintenance of completed projects.

(2) Cities, towns, and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right-of-way.

(3) The council, board of county commissioners, or other governing body shall also have the authority to receive and accept appropriations and contributions from any source of either money or property or other things of value to be held, used, and applied for the purposes provided in this part.

History: (1)En. Sec. 8, Ch. 272, L. 1965; amd. Sec. 7, Ch. 284, L. 1967; Sec. 89-3308, R.C.M. 1947; (2)En. Sec. 7, Ch. 272, L. 1965; amd. Sec. 6, Ch. 284, L. 1967; Sec. 89-3307, R.C.M. 1947; (3)En. Sec. 9, Ch. 284, L. 1967; Sec. 89-3309.1, R.C.M. 1947; R.C.M. 1947, 89-3307(part), 89-3308, 89-3309.1(part).

76-5-1113. Special assessments for operation and maintenance authorized. (1) Any city, town, or county that shall establish a water conservation or flood control system, or both, pursuant to this part may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system.

(2) Such special assessments for the operation and maintenance of any system authorized by this part shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).

Cross-References

Special improvement district assessments, Title 7, ch. 12, part 41.

76-5-1114. Determination of assessment. (1) The special assessment shall be:

(a) levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or

(b) at the option of the governing body of the city, town, or county, as the case may be, based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said benefited area; in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(2) However, where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).

76-5-1115. Fees and charges authorized. Cities, towns, and counties may for the purpose of providing funds for the operation and maintenance of completed projects fix, maintain, and collect fees, rents, tolls, and other charges for services rendered or facilities provided.

History: En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part).

76-5-1116. Determination of fees and charges. (1) In fixing such rate, fee, toll, or rent for water furnished for household use, domestic use, irrigation use, industrial use, and municipal use and for water used for streamflow stabilization, the governing body shall charge a fee sufficient to pay the proportionate share of the repairs, maintenance, and operating expenses as such use bears in economic value to the total economic value of the total use of said facilities of the project or projects. The economic value is to be determined by the governing body.

(2) For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control, and pollution abatement, the governing body shall determine a reasonable valuation or charge, which valuation or charge shall be certified by them to the county commissioners prior to the time general taxes are levied and assessed. It shall be the obligation of the county commissioners to levy a special assessment as provided for in 76-5-1113 and 76-5-1114 against such area or areas sufficient to provide revenues for the repairs, maintenance, and operating expenses of the project.

(3) For recreation use the governing body shall first determine the share of the costs of operation, repairs, and depreciation to be charged against such uses and from this figure shall subtract the estimated amount of fees and tolls collected for such uses. The deficiency, if any, shall be certified to the county commissioners in the same way as the charges for flood prevention, flood

control, etc., and special assessments shall be levied by the county commissioners in the manner set out herein.

History: En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part).

76-5-1117. Bonds authorized — procedure. Cities, towns, and counties are authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this part by following the procedures established for the issuance of such bonds under the provisions of Title 7, chapter 12, part 42, as to cities and towns and Title 7, chapter 12, part 21, as to counties. Payment and security for the bonds shall be provided by following the following procedures:

(1) Tax assessments for the payment of the bonds shall be levied in accordance with Title 7, chapter 12, parts 41 and 42, or Title 7, chapter 12, part 21, as to cities and counties, respectively, or 76-5-1114(1).

(2) A revolving fund, to be pledged for the security of the bonds, must be established pursuant to the provisions of Title 7, chapter 12, part 42, as to cities and towns, and Title 7, chapter 12, part 21, as to counties, by the governing body authorizing the issuance of the bonds.

History: En. Sec. 12, Ch. 272, L. 1965; amd. Sec. 1, Ch. 239, L. 1971; R.C.M. 1947, 89-3312; amd. Sec. 15, Ch. 266, L. 1979; amd. Sec. 1, Ch. 209, L. 1981.

CHAPTER 6

OPEN SPACES

Part 1 — General Provisions

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76-6-201. Conservation easements in general.
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Chapter Cross-References

Greenbelt appraisal, Title 15, ch. 7, part 2.

Part 1

General Provisions

76-6-101. Short title. This chapter may be cited as the "Open-Space Land and Voluntary Conservation Easement Act".

History: En. Sec. 1, Ch. 337, L. 1969; amd. Sec. 1, Ch. 489, L. 1975; R.C.M. 1947, 62-601.

76-6-102. Findings and policy. The legislature finds that:

(1) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

(2) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

(3) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

(4) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

(5) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

(6) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

(7) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

(8) the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-103. Purposes. In accordance with the findings in 76-6-102, the legislature states that the purposes of this chapter are to:

(1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest;

(2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and

(3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-104. Definitions. The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Comprehensive planning" means planning for development and shall include:

(a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development as a guide for long-range development;

(b) programming and financing plans for capital improvements;

(c) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and

(d) preparation of regulatory and administrative measures in support of the foregoing.

(2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction.

(3) "Open-space land" means any land which is provided or preserved for:

(a) park or recreational purposes;

(b) conservation of land or other natural resources;

(c) historic or scenic purposes; or

(d) assisting in the shaping of the character, direction, and timing of community development.

(4) "Public body" means the state, counties, cities, towns, and other municipalities.

(5) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) which qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter.

(6) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-105. Construction of chapter. (1) To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

(2) This chapter may not be construed to imply that any easement, covenant, condition, or restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain, or otherwise and to use land for public purposes.

History: (1)En. Sec. 9, Ch. 337, L. 1969; Sec. 62-609, R.C.M. 1947; (2)En. 62-618 by Sec. 14, Ch. 489, L. 1975; Sec. 62-618, R.C.M. 1947; R.C.M. 1947, 62-609(part), 62-618; amd. Sec. 279, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), at beginning, substituted "chapter" for "subsection"; and made minor changes in style. Amendment effective March 12, 1997.

76-6-106. Acquisition and designation of real property by public body. To carry out the purposes of this chapter, any public body may:

(1) acquire by purchase, gift, devise, bequest, or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both;

(2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interests, or both.

History: En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; R.C.M. 1947, 62-604(part).

76-6-107. Conversion or diversion of open-space land. (1) No open-space land, the title to or interest or right in which has been acquired under this chapter, shall be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with the program of comprehensive planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement.

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land shall be substituted within a reasonable period not exceeding 1 year for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(1).

76-6-108. Conveyance or lease of open-space lands. A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant unless the property is to be converted or diverted from open-space land use in accordance with the provisions of 76-6-107.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(2).

76-6-109. Powers of public bodies. (1) A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any or all of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state or a city, town, other municipality, or county may:

(a) appropriate funds;

(b) levy taxes and assessments according to existing codes and statutes not to exceed 1 mill;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

(d) exercise its powers under this chapter through a board or commission or through such office or officers as its governing body by resolution determines or as the governor determines in the case of the state.

History: En. Sec. 6, Ch. 337, L. 1969; R.C.M. 1947, 62-606.

76-6-110. Authorization and funding for planning commission. (1) The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in cooperation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities.

(2) Funds may be appropriated and made available for the comprehensive planning. Financial or other assistance from the federal government and any other public or private sources may be accepted and utilized for the planning.

History: En. Sec. 7, Ch. 337, L. 1969; R.C.M. 1947, 62-607.

Part 2
Conservation Easements

Part Cross-References

Servitudes and easements, Title 70, ch. 17, part 1.

76-6-201. Conservation easements in general. (1) Where a public body acquires under this chapter an interest in land less than fee, this acquisition shall be by conservation easement.

(2) A conservation easement may be applied to urban or nonurban land.

History: En. Secs. 3, 4, Ch. 337, L. 1969; amd. Secs. 3, 4, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part), 62-604(part).

76-6-202. Duration of conservation easements. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-203. Types of permissible easements. Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures—construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill—dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation—removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.—excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use—surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation—activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land—subdivision of land as defined in 76-3-103, 76-3-104, and 76-3-202;

(8) other acts—other acts or uses detrimental to such retention of land or water areas in their existing conditions.

History: **En. 62-610 by Sec. 7, Ch. 489, L. 1975; R.C.M. 1947, 62-610; amd. Sec. 16, Ch. 266, L. 1979.**

76-6-204. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.

History: **En. 62-611 by Sec. 8, Ch. 489, L. 1975; R.C.M. 1947, 62-611.**

76-6-205. Assignability of easements. For the purposes of this chapter, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise. No conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership. The assignees must be qualified under the terms of this chapter to hold a conservation easement.

History: **En. 62-613 by Sec. 10, Ch. 489, L. 1975; R.C.M. 1947, 62-613.**

76-6-206. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have 90 days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed, whichever occurs first.

History: **En. 62-614 by Sec. 11, Ch. 489, L. 1975; R.C.M. 1947, 62-614.**

Cross-References

Local planning and zoning, Title 76, ch. 2.

76-6-207. Recording and description of easement. (1) All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the department of revenue.

History: **En. 62-615 by Sec. 12, Ch. 489, L. 1975; R.C.M. 1947, 62-615.**

Cross-References

Procedure to record documents, 7-4-2617.

76-6-208. Taxation of property subject to conservation easement. (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

(2) Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

History: **En. Sec. 8, Ch. 337, L. 1969; amd. Sec. 6, Ch. 489, L. 1975; R.C.M. 1947, 62-608.**

Cross-References

Greenbelt appraisal, Title 15, ch. 7, part 2.

Assessment procedure, Title 15, ch. 8.

76-6-209. Easements to run with the land. The provisions of 70-17-202 and 70-17-203(1) and (2) notwithstanding, for the purposes of this chapter, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership.

History: **En. 62-612 by Sec. 9, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part).**

76-6-210. Enforcement. (1) Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

(2) No conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement or because such easement is an easement in gross.

History: **En. 62-612, 62-616 by Secs. 9, 13, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part), 62-616.**

Cross-References

Injunctions, Title 27, ch. 19.

76-6-211. Who may enforce easement. (1) The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

(2) Public bodies holding conservation easements shall enforce the provisions of these easements.

History: **(1)En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; Sec. 62-617,**

R.C.M. 1947; (2)En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; Sec. 62-604, R.C.M. 1947; R.C.M. 1947, 62-604(part), 62-617.

CHAPTERS 7 AND 8

RESERVED

CHAPTER 9

SHOOTING RANGES

Part 1 — Protection of Shooting Range Location and Investments

76-9-101. Policy.
76-9-102. Prohibitions.
76-9-103. Planning — effect on shooting ranges.
76-9-104. Zoning — effect on shooting ranges.
76-9-105. Closure of shooting ranges — limitations — relocation cost.

Part 1

Protection of Shooting Range Location and Investments

76-9-101. Policy. It is the policy of the state of Montana to provide for the health, safety, and welfare of the citizens of the state by promoting the safety and enjoyment of the shooting sports among the citizens of the state and by protecting the locations of and investment in shooting ranges for shotgun, archery, rifle, and pistol shooting.

History: En. Sec. 1, Ch. 415, L. 1991.

76-9-102. Prohibitions. (1) Standards adopted by a state agency or unit of local government to limit levels of noise that may occur in the outdoor atmosphere may not apply to shooting ranges.

(2) Standards adopted by a state agency or unit of local government promulgated pursuant to Title 75 and concerning pollution by lead, copper, or brass may not limit or prohibit the operation of a shooting range because of lead, copper, or brass deposition resulting from shooting activities.

History: En. Sec. 2, Ch. 415, L. 1991.

76-9-103. Planning — effect on shooting ranges. The laws of this state concerning planning, master plans, or comprehensive plans may not be construed to authorize an ordinance, resolution, or rule that would:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

History: En. Sec. 3, Ch. 415, L. 1991.

76-9-104. Zoning — effect on shooting ranges. A planning district master plan, recommendation, resolution, rule, or zoning designation may not:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

History: En. Sec. 4, Ch. 415, L. 1991.

76-9-105. Closure of shooting ranges — limitations — relocation cost. (1) Except as provided in subsection (2), an established shooting range may not be prevented from operation by a state agency, unit of local government, or court unless the range presents a clear and provable safety hazard to the adjacent population.

(2) If a pressing public need exists because of incompatibility with nearby population or land use, an established shooting range may be relocated by an agency of state government, unit of local government, or court, but only if all of the following conditions are met:

(a) pressing public need is documented through hearings, testimony, and a clear and precise statement of need by the agency, unit of local government, or court involved;

(b) the agency or unit of local government obtaining the closure pays the appraised cost of the land together with improvements to the operators of the shooting range. In return the shooting range operators shall relinquish their interest in the property to the agency or unit of local government obtaining the closure.

(3) If a shooting range presents a clear and provable safety hazard to adjacent population, the range may be suspended from operation if:

(a) reasonable notice and opportunity to respond are afforded the range operators; and

(b) reasonable opportunity is afforded the range operators to correct any safety defects.

History: En. Sec. 5, Ch. 415, L. 1991.

CHAPTER 10

RESERVED

CHAPTER 11

NATURAL RESOURCES IN GENERAL

Part 1 — Protection From Fire

76-11-101. Protection of natural resources from fire.
76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation.

Part 2 — Soil Survey and Mapping Program

76-11-201. Short title.
76-11-202. Purpose.
76-11-203. Repealed.
76-11-204. Repealed.

Chapter Cross-References

Natural resource information system, Title 90, ch. 15.

Part 1
Protection From Fire

76-11-101. Protection of natural resources from fire. The department of natural resources and conservation shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in emergencies, may employ personnel and incur other expenses when necessary.

History: En. Sec. 14, Ch. 147, L. 1909; re-en. Sec. 1836, R.C.M. 1921; re-en. Sec. 1836, R.C.M. 1935; amd. Sec. 1, Ch. 220, L. 1955; amd. Sec. 105, Ch. 253, L. 1974; amd. Sec. 18, Ch. 397, L. 1977; R.C.M. 1947, 81-1415; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 259, Ch. 418, L. 1995; amd. Sec. 1, Ch. 27, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 27 near beginning, after "conservation", deleted "under rules adopted by the state board of land commissioners" and after "shall" inserted "adopt rules to". Amendment effective February 21, 1997.

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation. (1) For the purpose of more adequately promoting and facilitating cooperation, financial and otherwise, between the state and all of the public and private agencies, the department of natural resources and conservation may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing on the land and also in the conservation and perpetuation of the lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer may receive money that may be appropriated or allotted for the purposes listed in subsection (1) by the state, counties, municipalities, the United States government or any department of the federal government, or other organization or individual.

History: (1)En. Sec. 9, Ch. 179, L. 1925; re-en. Sec. 1830.9, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1947; amd. Sec. 101, Ch. 253, L. 1974; Sec. 81-1409, R.C.M. 1947; (2)En. Sec. 10, Ch. 179, L. 1925; re-en. Sec. 1830.10, R.C.M. 1935; amd. Sec. 216, Ch. 147, L. 1963; Sec. 81-1410, R.C.M. 1947; R.C.M. 1947, 81-1409, 81-1410; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 260, Ch. 418, L. 1995.

Part 2
Soil Survey and Mapping Program

76-11-201. Short title. This part may be cited as the "Montana Soil Survey Act".

History: En. Sec. 1, Ch. 358, L. 1979.

76-11-202. Purpose. (1) The legislature finds that the soils of the state of Montana are one of its most basic and precious natural resources and that detailed knowledge of soil capabilities and adaptability is essential for:

(a) making wise land use decisions;

(b) preparing plans for cities, towns, counties, planning boards, farmers, foresters, industrial developers, and residential developers;

(c) locating and designing buildings, highways, reservoirs, and recreation areas; and

(d) protecting our forest, range, and agricultural lands.

(2) Pursuant to these findings, it is the intention of the legislature to accelerate the survey and mapping of the state's soil resources, to set a goal of completing the soil survey and mapping program.

History: En. Sec. 2, Ch. 358, L. 1979.

76-11-203. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. Sec. 3, Ch. 358, L. 1979; amd. Sec. 52, Ch. 112, L. 1991; amd. Sec. 46, Ch. 349, L. 1993.

76-11-204. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. Sec. 5, Ch. 358, L. 1979.

CHAPTER 12
WILD AND SCENIC RESOURCES

Part 1 — Natural Areas

76-12-101. Short title.
76-12-102. Legislative findings.
76-12-103. Statement of policy.
76-12-104. Definitions.
76-12-105. Repealed.
76-12-106. Repealed.
76-12-107. Methods of bringing land under part.
76-12-108. Acquisition of lands.
76-12-109. Report to legislature.
76-12-110. Restriction on condemnation or development of natural areas.
76-12-111. Continuation of existing uses.
76-12-112. Duties of board — administrative rules and hearing requirements.
76-12-113. Repealed.
76-12-114. Repealed.
76-12-115. Consultation with interested parties.
76-12-116. Files and proceedings open to public.
76-12-117. Application of more restrictive provisions.
76-12-118 through 76-12-120 reserved.
76-12-121. Duties of department — plan for natural areas system.
76-12-122. Terminated.
76-12-123. Natural areas account.

Part 1
Natural Areas

76-12-101. Short title. This part shall be known and may be cited as the "Montana Natural Areas Act of 1974".

History: En. 81-2701 by Sec. 1, Ch. 254, L. 1974; R.C.M. 1947, 81-2701.

76-12-102. Legislative findings. The legislature finds that:

(1) in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values or areas possessing these characteristics to a degree promising their restoration to a natural state;

(2) since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, selected areas should be preserved for the benefit of this and future generations;

(3) currently there are no regulations promulgated by the state or local governments to insure adequate protection for natural areas;

(4) it is necessary to establish a process for developing a system of natural areas and to encourage public and private participation in the establishment of a natural areas system for the benefit of the citizens of the state; and

(5) designations of natural areas should first consider protected natural features in publicly owned and privately dedicated lands, such as nature preserves, natural areas, parks, and wilderness areas, and should avoid duplication of these features.

History: En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part); amd. Sec. 1, Ch. 460, L. 1987.

76-12-103. Statement of policy. (1) It is the intention of the legislature to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity.

(2) In this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preservation of natural areas, whether trust or other lands, for the enjoyment and inspiration of future generations to be an object worthy of legislative action helpful to the well-being of the people of the state and also declares that the preservation of natural areas on state trust land has sufficient value to present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in the Enabling Act.

History: En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part).

76-12-104. Definitions. (1) "Board" means the board of land commissioners.

(2) "Department" means the department of natural resources and conservation.

(3) "Natural area" means an area of land that must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant and also must have one or more of the following characteristics:

(a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values;

(b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes.

(4) "Natural areas system" means the composite of lands in the state that exhibit the characteristics of natural areas and that have been designated by the board or dedicated or otherwise protected and managed as natural areas.

(5) "Register" means the Montana register of natural areas established under 76-12-121.

History: En. 81-2703 by Sec. 3, Ch. 254, L. 1974; R.C.M. 1947, 81-2703; amd. Sec. 2, Ch. 460, L. 1987; amd. Sec. 261, Ch. 418, L. 1995.

76-12-105. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).

76-12-106. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).

76-12-107. Methods of bringing land under part. A natural area, as defined in 76-12-104, may become subject to the provisions of this part in any of the following ways:

(1) designation by the board on lands controlled by the board;

(2) designation by the legislature on lands owned by the state of Montana;

(3) acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided, however, that transfer of surface property or development rights shall not alter the rights attending the subsurface estate if owned by another party;

(4) gift accepted by the board under the authority of 77-1-213, including conservation easements, provided that lands accepted must be protected and managed as natural areas and money accepted must be used in accordance with the purposes of this part;

(5) trade of state-owned trust land for a natural area on federal, county, or private land, provided, however, that lands received in exchange for trust lands should be equal in value to the exchanged trust land and as closely as possible equal in area; or

(6) registration of land by the department, following appropriate documentation and owner consent, that has been designated, dedicated, or otherwise protected as a natural area by the owner, including a private landowner, public interest group, or other land management agency.

History: En. 81-2704 by Sec. 4, Ch. 254, L. 1974; R.C.M. 1947, 81-2704; amd. Sec. 4, Ch. 460, L. 1987.

Cross-References

Exchanges of land, Title 77, ch. 2, part 2.

76-12-108. Acquisition of lands. Subject to the limits of available appropriations, the board is authorized to acquire interests to lands by any lawful means for the purpose of designating natural areas; provided that the board shall exercise the power of eminent domain only in specific instances where authorized by the legislature.

History: En. 81-2707 by Sec. 7, Ch. 254, L. 1974; R.C.M. 1947, 81-2707.

Cross-References

Preservation of cultural resources, Art. IX, sec. 4, Mont. Const.

Eminent domain, Title 70, ch. 30.

76-12-109. Report to legislature. The board may, as provided in 5-11-210, submit to each legislature a report on its designation and acquisition activities.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part); amd. Sec. 53, Ch. 112, L. 1991; amd. Sec. 47, Ch. 349, L. 1993.

76-12-110. Restriction on condemnation or development of natural areas. Natural areas acquired or designated in accordance with the provisions of this part are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the condemnation or development.

History: En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(1).

Cross-References

Eminent domain, Title 70, ch. 30.

Signs prohibited near natural areas, 75-15-113(8).

76-12-111. Continuation of existing uses. Land uses on the designated or acquired natural area in existence at the time of designation or acquisition by the board may continue under appropriate leases or agreements. All such land uses shall be controlled under regulations established by the board under 76-12-112.

History: En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(2).

76-12-112. Duties of board — administrative rules and hearing requirements. (1) The board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this part and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse.

(2) The regulations shall provide for meetings by the board for the receipt of testimony on the department's proposed designation of natural areas. No area shall be designated by the board unless the opportunity for public testimony has been afforded at meetings provided for in the regulations and positive notification of all involved landowners and lessees has been made.

(3) The board shall consider the department's recommendations as provided in 76-12-121(4) and issue a statement of its decision.

History: En. 81-2709 by Sec. 9, Ch. 254, L. 1974; R.C.M. 1947, 81-2709; amd. Sec. 5, Ch. 460, L. 1987.

Cross-References

Application of Montana Administrative Procedure Act, Title 2, ch. 4.

76-12-113. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).

76-12-114. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).

76-12-115. Consultation with interested parties. The department shall consult with citizen organizations, organizations representing Montana's basic resource industries, and other interested state agencies in the administration of this part.

History: En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part); amd. Sec. 8, Ch. 460, L. 1987.

76-12-116. Files and proceedings open to public. All files and proceedings under this part shall be open to the public.

History: En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

76-12-117. Application of more restrictive provisions. A designated natural area that is or shall become a part of a state park, wildlife refuge, or similar area shall be subject to the provisions of this part and the laws under which the other areas may be administered, and in the case of conflict between the provisions of these laws, the more restrictive provisions shall apply.

History: En. 81-2712 by Sec. 12, Ch. 254, L. 1974; R.C.M. 1947, 81-2712.

76-12-118 through 76-12-120 reserved.

76-12-121. Duties of department — plan for natural areas system. The department may:

(1) identify the existing and potential natural areas on lands under its jurisdiction and annually prepare a register listing the existing natural areas on private, county, state, and federal land;

(2) prepare and implement a biennial administrative plan for a natural areas system that will:

(i) assure equitable representation of the diversity of natural area types that are found to occur on private, county, state, and federal lands; and

(ii) include identification of important natural area needs, viable methods to make eligible lands a part of the natural areas system, responsible management entities, goals for establishing natural areas, obligations of cooperating agencies, organizations, and individuals, and administrative procedures for registering natural areas with the department;

(3) consider the concerns and comments of the board and the public in preparing and implementing the administrative plan described in subsection (2);

(4) make recommendations to the board for designation of natural areas on state lands and for acquisition of interests in other lands for the preservation of natural areas;

(5) provide that designated natural areas on state lands are available for multiple uses, including but not limited to grazing, recreation, and snowmobiling, if such uses are consistent with the state's obligations under The Enabling Act and do not interfere with the management or integrity of the natural area; and

(6) provide that the management of natural areas on state lands includes provisions for weed control consistent with 7-22-2151. The department assumes any levy under 7-22-2142 in natural areas; the lessee is not responsible for fire suppression costs in natural areas, and the lessee is not responsible for keeping natural areas free of garbage and debris.

History: **En. Sec. 3, Ch. 460, L. 1987.**

76-12-122. Terminated. Sec. 15, Ch. 460, L. 1987.

History: **En. Sec. 7, Ch. 460, L. 1987.**

76-12-123. Natural areas account. (1) There is a natural areas special revenue account within the state special revenue fund established in 17-2-102.

(2) The natural areas account may receive funds from any source as gifts.

(3) The department may spend funds accepted as gifts in accordance with the purposes of this part, including administration of a natural areas program.

History: **En. Sec. 9, Ch. 460, L. 1987; amd. Sec. 10, Ch. 628, L. 1989; amd. Sec. 56, Ch. 422, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 422 in (3) deleted second sentence that read: "These funds, except funds used for administration of a program, are statutorily appropriated, as provided in 17-7-502." Amendment effective July 1, 1997.

CHAPTER 13

TIMBER RESOURCES

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Chapter Cross-References

County forests, Title 7, ch. 8, part 26.

Timber trespass — treble damages, 70-16-107, 70-16-108.

Timber resources on state lands, Title 77, ch. 5.

Functions of Department of Commerce respecting forestry, 90-1-102.

Part 1
Protection of Forest Resources

76-13-101. Purpose. (1) It is the purpose of this part and part 2 to provide for the protection and conservation of forest resources, range, and water; the regulation of streamflow; and the prevention of soil erosion. It is further the purpose of this part and part 2 to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies which are associated in such work.

(2) To achieve the conservation of forest and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land.

History: En. 28-101.1 by Sec. 1, Ch. 253, L. 1974; R.C.M. 1947, 28-101.1; amd. Sec. 1, Ch. 423, L. 1989.

76-13-102. Definitions. Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(6) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and in which forest fire protection is provided through the medium of an agency recognized by the department.

(7) "Forest fire season" means the period of each year beginning May 1 and ending September 30, inclusive.

(8) "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

(10) "Lands" for conservation purposes means all forest lands within this state that are officially classified by the department as forest lands under 76-13-107.

(11) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(12) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(13) "Person" means an individual, corporation, partnership, or association of any kind.

(14) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the department as giving adequate fire protection to forest lands in accordance with rules adopted by the department.

(15) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part); amd. Secs. 1, 2, Ch. 529, L. 1981; amd. Sec. 2, Ch. 423, L. 1989; amd. Sec. 262, Ch. 418, L. 1995; amd. Sec. 2, Ch. 27, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 27 in definition of forest fire protection district, at end, substituted "department" for "board"; and in definition of recognized agency, in two places, substituted "department" for "board". Amendment effective February 21, 1997.

76-13-103. Applicability. This part and part 2 apply to all forest lands within this state that are officially classified by the department as forest lands according to the definition of forest land in 76-13-102.

History: En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; R.C.M. 1947, 28-104(2); amd. Sec. 3, Ch. 27, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 27 near middle substituted "department" for "board"; and made minor changes in style. Amendment effective February 21, 1997.

76-13-104. Functions of department. (1) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in 76-13-131, shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(1), (4), (6); amd. Sec. 4, Ch. 529, L. 1981; amd. Sec. 3, Ch. 423, L. 1989.

Cross-References

Exchange of timbered, cut-over, or burned-over lands, 77-2-211.

76-13-105. Protection of nonforest lands and improvements. Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department.

History: **En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(5).**

76-13-106. Cooperation between department and county. The county governing body shall cooperate with the department to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The county governing body shall list forest lands under its jurisdiction with the department for forest protection. The money the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties.

History: **En. Sec. 22, Ch. 128, L. 1939; amd. Sec. 15, Ch. 253, L. 1974; amd. Sec. 10, Ch. 397, L. 1977; R.C.M. 1947, 28-122; amd. Sec. 5, Ch. 529, L. 1981.**

76-13-107. Classification of forest lands. The department may classify the forest land areas of the state for which conservation and fire protection measures are reasonably required and change or modify the classification from time to time as in its judgment is proper.

History: **En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(3).**

76-13-108. Person responsible for performance of duties. (1) If the owner does not appear upon the public records as the holder of the legal title to the land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this part and part 2.

(2) Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this part and part 2 is upon the owner of the timber.

(3) Where the state has title to forest lands within any organized forest protection district, it shall be considered as an owner and it shall list its lands and pay the assessments to the recognized agencies responsible for lands in such organized forest protection districts.

History: **(1), (2)En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; Sec. 28-104, R.C.M. 1947; (3)En. Sec. 8, Ch. 128, L. 1939; Sec. 28-108, R.C.M. 1947; R.C.M. 1947, 28-104(1), 28-108.**

76-13-109. Rules. The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part and part 2.

History: **En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(2); amd. Sec. 6, Ch. 529, L. 1981; amd. Sec. 4, Ch. 27, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 27 at beginning substituted "department" for "board" and after "enforce" deleted "through the department". Amendment effective February 21, 1997.

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

76-13-110. Owner's right to board hearing. (1) An owner of forest land is entitled to a hearing before the board, after a request therefor, on any subject pertaining to the activities of the board, the department, or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the board may not have the effect of suspending the operations of the board, the department, or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the board may terminate those operations if found unreasonable.

(2) A hearing pertaining to costs charged against the forest land of an owner for protection thereof, as provided in 76-13-201, must be requested on or before August 15 each year.

History: En. Sec. 4, Ch. 141, L. 1941; amd. Sec. 20, Ch. 253, L. 1974; amd. Sec. 11, Ch. 397, L. 1977; R.C.M. 1947, 28-129.

76-13-111. Permissible expenditures. (1) The following funds may be expended as directed by the department for fire prevention, detection, suppression and for forest range, water, and soil conservation:

(a) all moneys collected by county treasurers as assessments on forest lands for forest protection;

(b) moneys collected for the abatement of public nuisances;

(c) all fines collected, except those collected in a justice's court, for violations of this part or part 2;

(d) the state's share of the cooperative fire protection funds allocated by the federal government;

(e) any other funds provided for the purposes herein indicated.

(2) All other cooperative funds collected, appropriated, or allocated for the use of the department, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where those forest plantings are helpful, and funds for other cooperative work, may not be expended except for the specific purposes for which they were collected, appropriated, or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963; amd. Sec. 2, Ch. 30, L. 1971; amd. Sec. 16, Ch. 253, L. 1974; R.C.M. 1947, 28-123; amd. Sec. 47, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

76-13-112. Penalty for violation. Unless otherwise provided by this part or part 2, a person who violates this part or part 2 or any rule adopted pursuant to this part or part 2 is guilty of a misdemeanor and shall be punished by a fine of not more than $500 or imprisonment in a county jail for not more than 6 months or both.

History: En. Sec. 27, Ch. 128, L. 1939; amd. Sec. 19, Ch. 253, L. 1974; R.C.M. 1947, 28-127; amd. Sec. 5, Ch. 27, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 27 near middle, after "adopted", deleted "by the board or department". Amendment effective February 21, 1997.

76-13-113. Destruction of signs. Any person who shall destroy, deface, remove, injure, or disfigure any sign, placard, proclamation, order, warning, or notice issued by any federal, state, or forest protection agency under the provisions of this part or part 2 and erected or posted at any point in the state shall be guilty of a misdemeanor.

History: En. Sec. 20, Ch. 128, L. 1939; R.C.M. 1947, 28-120.

76-13-114. Disposition of fines. Fines collected in a court of the state under this part or part 2, except those collected in a justice's court, must be transferred to the state treasurer for deposit in the state special revenue fund. Whenever a person is convicted in any court of a violation of this part or part 2, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected, except those collected in a justice's court, must be deposited by the court with the proper county treasurer for the benefit of the county.

History: En. Sec. 21, Ch. 128, L. 1939; amd. Sec. 14, Ch. 253, L. 1974; R.C.M. 1947, 28-121; amd. Sec. 34, Ch. 281, L. 1983; amd. Sec. 48, Ch. 557, L. 1987; amd. Sec. 38, Ch. 532, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 532 near end of first sentence, after "deposit in the", substituted "state special revenue" for "agency"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

76-13-115 through 76-13-120 reserved.

76-13-121. Permit for burning required. During the forest fire season or an expansion thereof, a person may not ignite or set a forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or an open fire within forest lands without an official written permit to ignite or set the fire from the recognized protection agency for that protection area. A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom.

History: En. Sec. 14, Ch. 128, L. 1939; amd. Sec. 11, Ch. 253, L. 1974; amd. Sec. 7, Ch. 397, L. 1977; R.C.M. 1947, 28-114.

76-13-122. Failure to comply with permit. A person to whom a written permit is issued to set or ignite a fire within forest lands during the forest protection season shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit is guilty of a misdemeanor. The department shall prescribe the form and substance of such permit.

History: En. Sec. 16, Ch. 128, L. 1939; amd. Sec. 12, Ch. 253, L. 1974; R.C.M. 1947, 28-116.

Cross-References

Penalty for misdemeanor, 46-18-212.

76-13-123. Failure to extinguish campfire. Any person who shall fail to extinguish any campfire set or ignited by him within any forest lands before leaving the same, who shall fail to extinguish any campfire used by him or left in his charge before leaving the same, or who shall negligently allow such fire to spread from the plot described in 76-13-121 shall be guilty of a misdemeanor.

History: En. Sec. 15, Ch. 128, L. 1939; R.C.M. 1947, 28-115.

Cross-References

Penalty for misdemeanor, 46-18-212.

Penalty for setting or leaving fire causing damage, 50-63-102.

Liability of offender for damages and costs, 50-63-103.

76-13-124. Throwing lighted materials. A person who throws or places any lighted cigarette, cigar, ashes, or other flaming or glowing substance that may start a fire in or near any forest material is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 128, L. 1939; amd. Sec. 8, Ch. 397, L. 1977; R.C.M. 1947, 28-117.

76-13-125. Spark arresters required. No person may use, drive, or operate within any forest lands any internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester and with modern, efficient devices to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of any such engine.

History: En. Sec. 18, Ch. 128, L. 1939; amd. Sec. 9, Ch. 397, L. 1977; R.C.M. 1947, 28-118.

76-13-126. Restrictions on sawdust piles. (1) Before each forest fire season, all persons, firms, or corporations creating or responsible for mill waste within the forest areas shall treat, dispose of, remove, or reduce the hazards created so that the accumulation of sawmilling waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969; amd. Sec. 13, Ch. 253, L. 1974; R.C.M. 1947, 28-119.

76-13-127 through 76-13-130 reserved.

76-13-131. Notification prior to forest practices — department response. (1) An operator or, pursuant to subsection (3), an owner shall notify the department prior to conducting forest practices. The notification may be provided as part of the notification made with respect to an agreement under 76-13-408.

(2) (a) Except as provided in subsection (3), within 5 working days, but not exceeding 7 calendar days, of receiving notification of forest practices, the department shall mail to the operator and, if an address has been provided, to the owner:

(i) a receipt of notification;

(ii) information on best management practices for forestry;

(iii) information on conservation district permit requirements related to stream crossings; and

(iv) any other information the department believes would assist the operator or the owner with conducting forest practices.

(b) The receipt of notification must include a statement that:

(i) forest practices may proceed; or

(ii) an onsite consultation is required prior to conducting forest practices.

(3) (a) An owner may submit to the department a notice providing an annual, semiannual, or quarterly operating plan that indicates the estimated

starting date of forest practices for each timber sale planned by the owner during the operating period. The plan must be submitted no less than 15 days before the beginning of the operating period covered.

(b) Upon receipt of an operating plan, the department may:

(i) meet with the owner to review the proposed timber sales, discuss watershed concerns, and schedule onsite consultations at appropriate sites; or

(ii) provide a receipt of notification, as described in subsection (2)(b), for individual timber sales.

(c) If the department requires an onsite consultation for any of the timber sales, it shall notify the owner of this requirement as soon as possible but no less than 10 calendar days prior to the estimated starting date of forest practices associated with the timber sale. The onsite consultation must then be scheduled according to the provisions of 76-13-132(2) through (4).

History: En. Sec. 4(1) thru (3), Ch. 423, L. 1989.

Cross-References

Fire hazard reduction agreement and bond, 76-13-408.

76-13-132. Onsite consultation. (1) The department shall make its decision on whether or not to require an onsite consultation based on whether:

(a) the proposed timber sale is in a high-priority location for watershed resources;

(b) a consultation could contribute to improved watershed management; and

(c) the department has sufficient resources to conduct the consultation.

(2) The department shall schedule an onsite consultation at a time mutually agreeable to the operator, the owner (if the owner can be contacted and wishes to participate), and the department. Unless otherwise agreeable to the operator and a participating owner, a consultation must be held no later than:

(a) 10 calendar days after the mailing of the notice by the department, if the site is accessible; or

(b) if the site is temporarily inaccessible due to road conditions, weather conditions, or other factors, 10 calendar days after the operator indicates that the site is accessible.

(3) The onsite consultation must include representatives of the department, the operator, and, if the owner desires representation, the owner. Representatives of the department of environmental quality, the department of fish, wildlife, and parks, and the local conservation district may also participate but shall meet the consultation schedule established under 76-13-131(3)(c) or subsection (2) of this section.

(4) If the department and the operator are not able to schedule an onsite consultation within the time limits provided in subsection (2)(a) or (2)(b) or at another mutually agreeable time, the requirement for a consultation is terminated. The operator may then proceed with forest practices immediately upon the expiration of the time limits provided in subsection (2)(a) or (2)(b).

History: En. Sec. 4(4) thru (7), Ch. 423, L. 1989; amd. Sec. 263, Ch. 418, L. 1995.

76-13-133. Purpose of onsite consultation — department responsibility. (1) The onsite consultation provided for in 76-13-132 is intended only for the purpose of providing information to owners and operators and does not confer upon the department or any other agency of state or local government authority to compel an owner or operator to undertake or refrain from undertaking specific management practices that are not otherwise regulated by law or rule.

(2) The department does not incur any obligation or liability by virtue of a decision to conduct or not conduct an onsite consultation.

(3) To the extent practicable, the department shall evaluate the application of forest practices as part of an onsite inspection, relating to the control of timber slash and debris, conducted under the provisions of Title 76, chapter 13, part 4.

History: En. Sec. 4(8), (9), (12), Ch. 423, L. 1989.

76-13-134. When additional notification required. (1) Except as provided in subsection (2), the department may require only one notification for each timber sale, even though multiple forest practices may be conducted.

(2) If an operator modifies his proposed forest practices in a manner that substantially alters the potential watershed disturbance, he shall submit a revised notification to the department.

History: En. Sec. 4(10), Ch. 423, L. 1989.

76-13-135. Emergency forest practices. Nothing in 76-13-131 through 76-13-135 precludes an operator from undertaking any forest practice in an emergency to prevent watershed damage or the loss of timber resources.

History: En. Sec. 4(11), Ch. 423, L. 1989.

Part 2

Provision of Fire Protection Services

76-13-201. Duty of owner to protect against fire. (1) An owner of forest land classified as such by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted by the department.

(2) If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than $30 for each landowner in the protection district and of not more than an additional 20 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. The owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department in accordance with this part and part 1.

(3) No other charges may be assessed those landowners participating except in cases of proven negligence on the part of the landowner or the landowner's agent.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967; amd. Sec. 1, Ch. 252, L. 1974; amd. Sec. 6, Ch. 253, L. 1974; amd. Sec. 4, Ch. 397, L. 1977; R.C.M. 1947, 28-109; amd. Sec. 1, Ch. 643, L. 1985; amd. Sec. 1, Ch. 360, L. 1991; amd. Sec. 6, Ch. 27, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 27 in (1), at end, substituted "department" for "board"; and made minor changes in style. Amendment effective February 21, 1997.

76-13-202. Means by which department may provide protection. The department may provide for forest fire protection of any forest lands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(2).

76-13-203. Extension of the forest fire season. In the event of excessive or great fire danger, the period defined in 76-13-102(7) may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part).

76-13-204. Creation, annexation of land into, and dissolution of forest fire protection districts. (1) In accordance with the provisions of subsections (2) and (3), the department may create, annex land to, or dissolve forest fire protection districts.

(2) Before a district is created, land is annexed into a district, or a district is dissolved, the department shall hold a hearing in any county in which land affected by the proposed change is located.

(a) The department shall give notice at least 20 days in advance of the hearing to all property owners to be affected by the proposed change. Service of the notice may be made by certified mail to each affected property owner or by publication of the notice in a newspaper published or generally circulated in the county in which the hearing is to be held.

(b) The department shall consider the arguments made for and against the proposed change in making a determination under this section.

(3) (a) A forest fire protection district may not be created or dissolved unless approved in writing by a vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the affected forest fire protection district.

(b) Land may not be annexed into a district unless approved by 51% of the owners representing at least 51% of the acreage to be annexed.

(4) Land annexed into a district may not be removed from that district unless that district is dissolved.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(1); amd. Sec. 1, Ch. 147, L. 1993; amd. Sec. 7, Ch. 27, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 27 in (1) and (2) substituted "department" for "board"; and in (2)(b), after "shall", substituted "consider" for "report to the board" and after "change" substituted "in making a determination under this section" for "and shall make a recommendation to the board". Amendment effective February 21, 1997.

76-13-205. Determination of boundaries of district. In establishing boundaries of organized forest fire protection districts covering forest lands, the department may for the purpose of administrative convenience designate recognizable landmarks as boundaries.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(2); amd. Sec. 8, Ch. 27, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 27 near middle substituted "department" for "board". Amendment effective February 21, 1997.

76-13-206. What constitutes compliance with duty to protect against fire for landowners within district. An owner of forest lands within an organized forest fire protection district while a member of or while participating in a recognized agency for forest protection or within areas protected by a county shall be considered to have fully complied with the requirements of 76-13-201.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(1).

76-13-207. Determination and collection of costs of fire protection. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 76-13-201, sufficient to bring the total amount received from the landowners to no greater than one-third of the amount specified in the appropriation.

(2) On or before the second Tuesday in August of each year, the department shall certify in writing to the department of revenue the names of these owners of forest lands in each county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the department of revenue shall extend the amounts upon the county tax rolls covering the lands, and the sums become obligations of the owner, to be paid and collected in the same manner and at the same time and subject to the same penalties as general state and county taxes upon the same property are collected.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part); amd. Sec. 2, Ch. 643, L. 1985; amd. Sec. 138, Ch. 27, Sp. L. November 1993.

76-13-208. Nature of assessments for forest fire protection. All payments required of owners of forest lands by this part and part 1 are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of such owners.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(3).

76-13-209. Disposition of assessments. All sums collected pursuant to 76-13-207 shall be promptly deposited in the state special revenue fund.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part); amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 8, Ch. 700, L. 1989.

76-13-210. Payment under protest. An owner who is required to pay to the county treasurer any sum for forest protection as required by this part or part 1 and who contends that he is not legally obligated to pay the sum or some part thereof shall pay it to the county treasurer under written protest stating the reasons for the protest. The payment under protest and all proceedings subsequent thereto shall be in conformity with the law of this state providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of the board and the department may be reviewed and decided.

History: En. Sec. 12, Ch. 128, L. 1939; amd. Sec. 9, Ch. 253, L. 1974; R.C.M. 1947, 28-112.

Cross-References

Protest payments, actions to recover, and alternative remedies, Title 15, ch. 1, part 4.

76-13-211. Amount due for protection treated as lien. (1) Whenever the department provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this part or part 1, the amount due for the forest protection is a lien upon the land or timber which shall continue until such time as the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the forest landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of this part or part 1 for the payment and collection of amounts due to the department.

History: En. Sec. 13, Ch. 128, L. 1939; amd. Sec. 10, Ch. 253, L. 1974; R.C.M. 1947, 28-113; amd. Sec. 52, Ch. 587, L. 1987.

Cross-References

Liens, Title 71, ch. 3.

Part 3

Control of Forest Diseases and Insect Pests

76-13-301. Policy. It is the public policy of the state to protect and preserve forest resources from destruction by forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, and to independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases.

History: En. Sec. 1, Ch. 25, L. 1953; Sec. 28-130, R.C.M. 1947; amd. and redes. 28-204 by Sec. 21, Ch. 253, L. 1974; R.C.M. 1947, 28-204.

76-13-302. Definitions. In this part, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Forest land" means any land that has enough forest growth, standing or down, to constitute in the judgment of the department an insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(3) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

(4) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects, disease, fire, or windthrow when the removal of timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or provide long-range protection for such forest resources as wildlife, water, soils, or air quality.

History: En. Sec. 3, Ch. 25, L. 1953; Sec. 28-131, R.C.M. 1947; amd. and redes. 28-205 by Sec. 22, Ch. 253, L. 1974; R.C.M. 1947, 28-205; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 285, L. 1993; amd. Sec. 264, Ch. 418, L. 1995.

76-13-303. Creation of zone of infestation. Whenever the department determines that there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state and that the infestation is of such a character as to be a menace to the timber or forest growth of this state, the department shall, with the approval of the board of land commissioners, declare the existence of a zone of infestation and fix the boundaries so as to definitely describe and identify the zone.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(1); amd. Sec. 2, Ch. 529, L. 1981.

76-13-304. Suppression and eradication of infestation. (1) The department may enter upon the land within the zone and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated, and destroyed in the manner approved by it.

(2) In order to accomplish the suppression, eradication, and destruction of the infestation, the department may enter into cooperative agreements with the federal government or other public or private agencies and with forest landowners, using such funds as are made available for those purposes.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(2).

76-13-305. Termination of zone of infestation. When the department determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, it shall abolish the zone.

History: En. Sec. 6, Ch. 25, L. 1953; Sec. 28-134, R.C.M. 1947; amd. and redes. 28-207 by Sec. 24, Ch. 253, L. 1974; R.C.M. 1947, 28-207.

Part 4
Control of Timber Slash and Debris

Part Cross-References

Brush disposal requirements, 77-5-204.

76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Certification of clearance" means a certification issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.

(3) "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or chipping.

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and persons engaged in continuing cutting operations of sufficient number and size to warrant covering these operations under a single agreement and a single bond.

(10) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

(11) "Purchaser" means a person who purchases or contracts to purchase any forest products cut from private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area.

History: En. 28-403.1 by Sec. 1, Ch. 522, L. 1975; R.C.M. 1947, 28-403.1; amd. Secs. 1, 2, Ch. 529, L. 1981; amd. Sec. 1, Ch. 513, L. 1989; amd. Sec. 265, Ch. 418, L. 1995.

76-13-402. Basis for management of fire hazards. The fire hazard reduction or management referred to in this part shall be carried on by the department in keeping with modern and progressive forest practices and effective forest fire protection and may include but is not limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

History: Ap. p. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; Sec. 28-408, R.C.M. 1947; Ap. p. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; Sec. 28-411, R.C.M. 1947; R.C.M. 1947, 28-408(2), 28-411(part); amd. Sec. 2, Ch. 513, L. 1989.

76-13-403. Supervision by department. The department may adopt and enforce rules to supervise and inspect the fire hazard reduction or management of all fire hazards created by forest products harvesting, timber stand improvement, and right-of-way clearing on private land in the state.

History: En. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; R.C.M. 1947, 28-408(1); amd. Sec. 3, Ch. 513, L. 1989; amd. Sec. 9, Ch. 27, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 27 near beginning, after "department", deleted "under rules adopted by the board" and after "may" inserted "adopt and enforce rules to". Amendment effective February 21, 1997.

76-13-404. Repealed. Sec. 13, Ch. 513, L. 1989.

History: En. Sec. 7, Ch. 207, L. 1959; amd. Sec. 2, Ch. 147, L. 1971; amd. Sec. 32, Ch. 253, L. 1974; amd. Sec. 7, Ch. 522, L. 1975; R.C.M. 1947, 28-410; amd. Sec. 1, Ch. 670, L. 1979.

76-13-405. Contracts with forest fire protection agencies. The department is authorized to enter into contracts with forest fire protection agencies, including agencies of the United States, for fire hazard reduction or management when in its opinion the work can best be accomplished in that manner.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part); amd. Sec. 4, Ch. 513, L. 1989.

76-13-406. Limitation on liability. The department and other recognized forest fire protection agencies, including any agency of the United States, with which the department has entered into an agreement for fire hazard reduction or management as provided in 76-13-405 and any officer, official, or employee of the department or other recognized forest fire protection agency is not liable for any damage to the land, product, improvement, or other things of value upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of this part, the rules adopted under 76-13-403, and the fire hazard reduction agreement when reasonable care and caution has been used and the work is being or has been performed in compliance with the rules provided in 76-13-403.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part); amd. Sec. 5, Ch. 513, L. 1989.

Cross-References

Liability exposure, Title 2, ch. 9, part 1.

76-13-407. Reduction of slash and debris along right-of-way. (1) A person clearing right-of-way for any railroad, public highway, public trail, private road, trail, ditch, dike, pipeline or wire lines, or any other transmission or transportation utility right-of-way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public or private utility unless exempted by the department. At least 10 days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.

(2) Hazard reduction, excluding burning where this method is used, shall be done as rapidly as cutting or clearing progresses.

(3) This section applies to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts, and road districts, whether the work is done by day labor or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting the work for withholding until it is complete a sufficient portion of the payment to assure compliance with this part.

History: **En. Sec. 2, Ch. 207, L. 1959; amd. Sec. 28, Ch. 253, L. 1974; amd. Sec. 3, Ch. 522, L. 1975; R.C.M. 1947, 28-405; amd. Sec. 2, Ch. 670, L. 1979; amd. Sec. 6, Ch. 513, L. 1989.**

Cross-References

Control of fire hazard along railroad right-of-way, 69-14-721.

76-13-408. Fire hazard reduction agreement and bond. (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber stand improvement, such as but not limited to thinning, weeding, or pruning, upon private lands within the state, the person conducting the work shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department, providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted under this part.

(2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post a bond to the state in a form and for an amount as may be prescribed by the department, but the amount may not exceed $6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut.

(3) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall pay 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(4) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted under this part.

(5) The bond must be released upon the issuance of the certificate of clearance.

History: **En. Sec. 1, Ch. 207, L. 1959; amd. Sec. 27, Ch. 253, L. 1974; amd. Sec. 2, Ch. 522, L. 1975; R.C.M. 1947, 28-404; amd. Sec. 5, Ch. 423, L. 1989; amd. Sec. 7, Ch. 513, L. 1989; amd. Sec. 1, Ch. 577, L. 1991; amd. Sec. 10, Ch. 27, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 27 in (1), at end, and in (4)(b), at end, substituted "under this part" for "by the board". Amendment effective February 21, 1997.

76-13-409. Duty of purchaser to ensure compliance — statement — bond. (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of these forest products has provided for the reduction or management of the fire hazard by entering into a fire hazard reduction agreement as provided in 76-13-408.

(2) The purchaser shall withhold sufficient money to meet the requirements of the bond provided for in 76-13-408 plus the fees for administration, inspection, and enforcement by the department as provided in the hazard reduction agreement. The purchaser shall transmit all money and fees that are withheld and a report of volumes of products purchased to the department on or before the 15th day of the following month, clearly identifying by number the fire hazard reduction agreement to which the withheld money, fees, and product volumes pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

(3) If forest products are not received or purchased in a given month, a report showing a zero balance and stating that products were not purchased must be submitted to the department.

(4) The department may require the purchaser to post a bond to the state in a form and for an amount as may be prescribed by the department to ensure faithful compliance with this part.

History: En. Sec. 3, Ch. 207, L. 1959; amd. Sec. 29, Ch. 253, L. 1974; amd. Sec. 4, Ch. 522, L. 1975; R.C.M. 1947, 28-406; amd. Sec. 3, Ch. 670, L. 1979; amd. Sec. 8, Ch. 513, L. 1989.

76-13-410. Failure to comply. (1) If a person fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with the requirements of 76-13-407 and 76-13-408, he may be enjoined from further cutting, clearing, and construction operations until 76-13-407 and 76-13-408 have been complied with. The department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings shall be conducted in the district court of the county where the land is located.

(2) If a person fails to comply with 76-13-407 or 76-13-408 and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the fire hazard reduction or management at the expense of the contractor or of the owner of the timber or other forest products cut or produced from the land upon which the unabated fire hazard remains.

(3) The cost and expense of the fire hazard reduction or management work, plus 20% of the cost and expense of the work as a penalty, constitutes a lien upon the forest products cut or produced from the land and upon the real and personal property of the contractor. If payment of the sum demanded is not made to the department within 10 days of its written demand, the department shall bring legal action on behalf of the state to recover the debt.

History: En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; R.C.M. 1947, 28-407(1) thru (3); amd. Sec. 4, Ch. 670, L. 1979; amd. Sec. 9, Ch. 513, L. 1989.

76-13-411. Certification of clearance. When the department makes a determination of faithful compliance by the contractor with this part, the rules adopted under 76-13-403, and the hazard reduction agreement, the contractor must be issued a certification of clearance by the department and be relieved of any further liability or responsibility for fire hazard reduction or management under the fire hazard reduction agreement.

History: (1)En. Sec. 9, Ch. 207, L. 1959; amd. Sec. 3, Ch. 147, L. 1971; amd. Sec. 34, Ch. 253, L. 1974; amd. Sec. 8, Ch. 522, L. 1975; Sec. 28-412, R.C.M. 1947; (2)En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; Sec. 28-407, R.C.M. 1947; R.C.M. 1947, 28-407(4), 28-412; amd. Sec. 10, Ch. 513, L. 1989.

76-13-412. Violations. A person convicted of violating this part is guilty of a misdemeanor and shall be fined not less than $100 or more than $1,000.

History: En. 28-413 by Sec. 9, Ch. 522, L. 1975; R.C.M. 1947, 28-413.

Cross-References

Definition of misdemeanor, 45-2-101.

76-13-413. Failure to submit withholding — remedy. (1) If a purchaser does not submit withheld money and required reports on or before the 15th day of the following month as provided in 76-13-409, he must be notified by certified mail that he is in noncompliance and be given 15 days to submit all money and reports then due. If he fails to submit all money due within the required time, the department may initiate a lien upon the real property of the purchaser and may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full and all required reports are submitted.

(2) If payment and reports are not received by the department within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the payment amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due or the reports as required was due to reasonable cause and was not due to neglect on his part. The department, in addition to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid.

(3) All money withheld by a purchaser for the contractor's bond and for department fees is considered to be excise taxes withheld for the benefit of the state within the meaning of 11 U.S.C. 507.

History: En. Sec. 5, Ch. 670, L. 1979; amd. Sec. 1, Ch. 115, L. 1981; amd. Sec. 11, Ch. 513, L. 1989.

76-13-414. Fees. (1) In addition to any bond, the department shall charge the contractor fees for administration, inspections, and enforcement work conducted in the exercise of its duties under this part. The fees must be deposited in the state special revenue fund to the credit of the department.

(2) (a) The fee for a fire hazard reduction agreement is $25 and must be collected by the department upon issuance of the agreement.

(b) In addition, a fee of 60 cents for each 1,000 board feet (log scale) must be charged or an equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding 500,000 board feet per agreement in a calendar year must be returned to the contractor by the department.

(3) (a) The fee for master fire hazard reduction agreements must be equal to 100% of the department's actual costs incurred in the administration, inspection, and enforcement of each agreement, and the department shall bill the contractor annually to collect the fees.

(b) In addition, each contractor with a master fire hazard reduction agreement shall pay to the department 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year for each master fire hazard attachment. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(c) The fee required under subsection (3)(b) must be paid annually in conjunction with the fee paid under subsection (3)(a). The department may, in its discretion, conduct an audit to determine the volume of forest products harvested by a contractor. If the department conducts an audit, the contractor shall cooperate and make available to the department all requested records, inventories, and other information relevant to the audit.

History: **En. Sec. 12, Ch. 513, L. 1989; amd. Sec. 2, Ch. 577, L. 1991; amd. Sec. 11, Ch. 27, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 27 in (3)(c), in second sentence and in two places in third sentence, substituted "department" for "board"; and made minor changes in style. Amendment effective February 21, 1997.

76-13-415. Forestry extension service account — purpose — appropriation. (1) There is a forestry extension service account in the current restricted fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the fire hazard reduction agreement provided for in 76-13-408(3);

(b) all revenue from the master fire hazard reduction agreement provided for in 76-13-414(3)(b); and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money in the account is available to the Montana university system by appropriation for the uses set forth in subsection (4). Any unencumbered and unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or appropriated.

(4) Except as provided in subsection (5), money in the account may be used by the university system only to fund forestry services through the Montana cooperative extension service of Montana state university-Bozeman. The forestry services must be conducted at Montana state university-Bozeman, the university of Montana-Missoula, and Flathead Valley community college.

(5) The use of money in this account by the Montana university system is contingent upon the university system funding the extension service's forestry and natural resources program at a biennial level of at least $108,000 from sources other than the account.

History: **En. Sec. 3, Ch. 577, L. 1991; amd. Sec. 266, Ch. 418, L. 1995; amd. sec. 36, Ch. 308, L. 1995.**

Part 5
Portable Sawmills on Forest Lands

76-13-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than 5,000 feet per hour of operation.

History: En. 28-801 by Sec. 106, Ch. 253, L. 1974; R.C.M. 1947, 28-801; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 267, Ch. 418, L. 1995.

76-13-502. Portable sawmill license required. It is unlawful to operate a portable sawmill located upon forest lands within the state without first obtaining a license therefor from the department.

History: En. Sec. 1, Ch. 124, L. 1931; re-en. Sec. 1839.1, R.C.M. 1935; Sec. 81-1501, R.C.M. 1947; amd. and redes. 28-802 by Sec. 107, Ch. 253, L. 1974; R.C.M. 1947, 28-802.

76-13-503. Application for license — fee. (1) Whenever a person, firm, or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state, that person, firm, or corporation shall apply to the department in writing for a license to operate the portable sawmill. The application shall include the name of the person, firm, or corporation contemplating the operation of the sawmill; the location thereof by section, township, and range numbers; the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting; and the approximate date desired for the commencement of the operation.

(2) The application shall be accompanied by the payment of a fee of $2, which is fixed as the license fee for the operation of any portable sawmill, to be credited to the agency fund.

History: En. Sec. 2, Ch. 124, L. 1931; re-en. Sec. 1839.2, R.C.M. 1935; amd. Sec. 2, Ch. 248, L. 1965; Sec. 81-1502, R.C.M. 1947; amd. and redes. 28-803 by Sec. 108, Ch. 253, L. 1974; R.C.M. 1947, 28-803; amd. Sec. 35, Ch. 281, L. 1983.

76-13-504. Issuance of license — term. Upon the receipt of the application and the payment of the fee, the department shall issue a license to the person, firm, or corporation applying therefor. The license shall be upon a form provided by the department and shall cover such period as the sawmill remains in continuous operation on a single setting or location or until revocation by the department.

History: En. Sec. 3, Ch. 124, L. 1931; re-en. Sec. 1839.3, R.C.M. 1935; Sec. 81-1503, R.C.M. 1947; amd. and redes. 28-804 by Sec. 109, Ch. 253, L. 1974; R.C.M. 1947, 28-804.

76-13-505. Revocation of license. Whenever it appears that there is a violation of any law of the state enacted for the protection of forest and forest lands in connection with the operation of a portable sawmill or in the protection of the lands from which the timber sawed or to be sawed at a mill is cut, the department may revoke the license and thereby suspend the operation of a sawmill until the conditions constituting a violation of law are remedied and removed.

History: En. Sec. 4, Ch. 124, L. 1931; re-en. Sec. 1839.4, R.C.M. 1935; Sec. 81-1504, R.C.M. 1947; amd. and redes. 28-805 by Sec. 110, Ch. 253, L. 1974; R.C.M. 1947, 28-805.

76-13-506. Penalty. A person, firm, or corporation violating this part is guilty of a misdemeanor and shall be fined not less than $25 or more than $500, which fines are to be credited to the general school funds of the state.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

76-13-507. Effect on liability for fire. This part shall not be construed to in any manner affect the civil liability of any person in connection with the origin or spread of fire in the forest lands of the state.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

Part 6

Transportation of Coniferous Trees

76-13-601. Unlawful transportation of trees and boughs. (1) A person may not transport on the ways of this state more than five coniferous trees without having possession of a bill of sale showing ownership of the trees. The bill of sale shall specify:

(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or the owner's agent, provided that agent has possession of a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested; or

(d) the transportation of coniferous trees by a common carrier.

(3) A person may not transport on the ways of this state more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.

(4) The bill of sale required in subsection (1) or the written authorization required in subsection (3) must be exhibited on request of a law enforcement officer, highway patrol officer, state fish and game warden, an employee of the department of transportation as appointed under 61-12-201, or an agent of the department of natural resources and conservation.

(5) A person who violates this section shall be punished by a fine not to exceed $500, imprisonment not to exceed 6 months, or both.

(6) For the purposes of this section, "ways of this state" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner.

History: En. Sec. 1, Ch. 133, L. 1981; amd. Sec. 1, Ch. 621, L. 1983; (5)En. Sec. 2, Ch. 621, L. 1983; amd. Sec. 1, Ch. 35, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 268, Ch. 418, L. 1995.

Cross-References

Place of imprisonment when not specified by law, 46-18-211.

CHAPTER 14

RANGELAND RESOURCES

Part 1 — Rangeland Management

76-14-101. Short title.
76-14-102. Purpose.
76-14-103. Definitions.
76-14-104. Types of land included as rangeland.
76-14-105. Role of state coordinator.
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76-14-111. Rangeland improvement loan program.
76-14-112. Rangeland improvement loan special revenue account.
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76-14-115. Selection of loan recipients.
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Part 1

Rangeland Management

76-14-101. Short title. This part shall be known as the "Montana Rangeland Resources Act".

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977; R.C.M. 1947, 76-301.

76-14-102. Purpose. The purpose of this part is to establish a program of rangeland management whereby:

(1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;

(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and

(3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408, L. 1977; R.C.M. 1947, 76-302.

76-14-103. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Person" means any individual or association, partnership, corporation, or other business entity.

(6) "Range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

(7) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(8) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(9) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(10) "Tame pasture" means land that has been modified by mechanical cultivation and whose current vegetation consists of native or introduced species, or both.

(11) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: (1) thru (6), (8)En. 76-303 by Sec. 3, Ch. 408, L. 1977; Sec. 76-303, R.C.M. 1947; (7)En. by Code Commissioner, 1979; R.C.M. 1947, 76-303(part); amd. Sec. 1, Ch. 171, L. 1983.

76-14-104. Types of land included as rangeland. The term "rangeland" includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

History: En. 76-303 by Sec. 3, Ch. 408, L. 1977; R.C.M. 1947, 76-303(part).

76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including sportsmen, recreationists, ranchers, and others;

(3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(4) participate in zoning and planning studies to insure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(5) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(2).

76-14-106. Duties of rangeland resources committee. (1) The committee shall:

(a) review and recommend annual and long-range work programs;

(b) suggest priorities of work;

(c) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

(2) The committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties.

History: En. 76-307 by Sec. 7, Ch. 408, L. 1977; R.C.M. 1947, 76-307; amd. Sec. 2, Ch. 44, L. 1985.

76-14-107 through 76-14-110 reserved.

76-14-111. Rangeland improvement loan program. The department may make rangeland improvement loans for rangeland development and improvement, including but not limited to stockwater development, cross fencing, establishment of grazing systems, reseeding, mechanical renovation, sagebrush management, and weed control.

History: En. Sec. 2, Ch. 171, L. 1983.

76-14-112. Rangeland improvement loan special revenue account. (1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be allocated to the rangeland improvement loan earmarked account any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests.

History: En. Sec. 3, Ch. 171, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 14, Ch. 418, L. 1987; amd. Sec. 55, Ch. 16, L. 1991.

76-14-113. Eligibility for loans. (1) Any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who:

(a) is a resident of Montana;

(b) is engaged in farming or ranching; and

(c) possesses the necessary expertise to make a rangeland loan practical.

(2) All loans must be for rangeland improvement or development exclusively.

(3) An application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States natural resources conservation service.

History: En. Sec. 4, Ch. 171, L. 1983; amd. Sec. 280, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (3), at end, substituted "natural resources conservation service" for "soil conservation service". Amendment effective March 12, 1997.

76-14-114. Criteria for evaluation of loan applications. The following criteria must be considered in selecting loan recipients:

(1) Loan applications must be ranked according to the following priorities:

(a) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition and of benefit to more than a single operator, have first priority.

(b) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition but of benefit to only a single operator, have second priority.

(c) Range improvement or development projects undertaken on either native rangeland or tame pastureland used in conjunction with native rangeland, or both, resulting in the improvement of native range condition and the condition of the tame pastureland used in conjunction with native rangeland, have third priority.

(d) Range improvement or development projects undertaken on tame pastureland, resulting in the improvement of the tame pastureland exclusively, have fourth priority.

(e) Range improvement or development projects undertaken to return to rangeland status land that was once native rangeland and that has since been cultivated have fifth priority.

(2) Consideration must be given to the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and soil conservation.

(3) Consideration must be given to the amount of funding from other sources.

(4) Consideration must be given to the feasibility and practicality of the project.

History: En. Sec. 5, Ch. 171, L. 1983.

76-14-115. Selection of loan recipients. (1) Conservation district supervisors shall initially review loan applications for feasibility and prioritize applications for referral to the department.

(2) The department shall organize and review applications for clarity and completeness prior to committee review.

(3) The committee shall consider applications and make recommendations to the department.

(4) The department shall finally approve or disapprove applications recommended by the committee and shall select loan recipients.

History: En. Sec. 6, Ch. 171, L. 1983.

76-14-116. Rules. The department shall adopt rules:

(1) prescribing the form and content of applications for loans and the required conservation plan;

(2) governing the application of the criteria for awarding loans and the procedure for the review of applications by conservation district supervisors, the committee, and the department;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted; and

(5) prescribing the conditions for making loans.

History: En. Sec. 7, Ch. 171, L. 1983.

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

CHAPTER 15

CONSERVATION DISTRICTS

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Chapter Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.

Conservation easements, Title 76, ch. 6, part 2.

Part 1
General Provisions

76-15-101. Legislative determinations. It is hereby declared, as a matter of legislative determination:

(1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of

soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible;

(2) that the consequences of such soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops and range cover grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods which bring suffering, disease, and death; impoverishment of families attempting to operate eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in municipal water supply, irrigation developments, farming, and grazing;

(3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History: **En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(A) thru (C).**

76-15-102. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: **En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(D).**

76-15-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions set forth in this chapter.

(4) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area. The posting must include, when possible, posting at public places where it is customary to post notices concerning county or municipal affairs generally.

(5) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(6) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity that holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

(7) "Petition" means a petition filed under 76-15-201 for the creation of a district.

(8) "Qualified elector" means an elector as defined in Title 13.

(9) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

(10) "United States" or "agencies of the United States" includes the United States of America, the natural resource conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: **En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part); amd. Sec. 393, Ch. 571, L. 1979; amd. Sec. 269, Ch. 418, L. 1995.**

76-15-104. Adjournment of hearings. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part).

76-15-105. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

(1) offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) keep the supervisors of each of the several districts informed of the activities and experiences of all other districts and facilitate an interchange of advice and experiences between the districts and cooperation between them;

(3) coordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;

(4) secure the cooperation and assistance of the United States and of agencies of this state in the work of the districts;

(5) disseminate information throughout the state concerning the activities and programs of the conservation districts; and

(6) encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974; R.C.M. 1947, 76-104.

Part 2

Creation of Conservation Districts

76-15-201. Petition to create conservation district. (1) Any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the department approve the organization of a conservation district to function in the territory described in the petition.

(2) The petition must set forth:

(a) the proposed name of the district;

(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but is sufficient if generally accurate;

(d) a request that:

(i) the department define the boundaries for the district;

(ii) a referendum be held within the territory defined on the question of the creation of a conservation district in the territory; and

(iii) the department determine that a district be created.

(3) Where more than one petition is filed covering parts of the same territory, the department may consolidate all or any part of the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(1), (2); amd. Sec. 1, Ch. 76, L. 1985; amd. Sec. 270, Ch. 418, L. 1995.

76-15-202. Hearing on petition. (1) Within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity in the interest of the public health, safety, and welfare of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this chapter; and upon all questions relevant to those inquiries.

(2) All qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the described territory and all other interested parties are entitled to attend the hearings and be heard.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

Cross-References

Applicability of Montana Administrative Procedure Act, 2-4-107.

76-15-203. Hearing procedure if additional territory to be included. If it appears to the department after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the department shall adjourn the hearing and shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district. The further hearing must be held by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 271, Ch. 418, L. 1995.

76-15-204. Determination of need for district. (1) After the hearing, if the department determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.

(2) If the department determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made on the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 272, Ch. 418, L. 1995.

76-15-205. Criteria for determining need. In making the determinations and in defining the boundaries, the department shall consider the topography of the area considered and of the state, the composition of soils in the area, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 273, Ch. 418, L. 1995.

76-15-206. Determination of administrative practicability of district. After the department has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries of the district, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 274, Ch. 418, L. 1995.

76-15-207. Referendum on question of creating district. (1) To assist the department in the determination of administrative practicability and feasibility, the department shall, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.

(2) The question must be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot must set forth the boundaries of the proposed district as determined by the department.

(3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 275, Ch. 418, L. 1995.

76-15-208. Administration of hearings and referenda. (1) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum.

(2) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(5).

76-15-209. Procedure following referendum. (1) The department shall publish the result of the referendum, and shall consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the department determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner provided in this chapter.

(3) If the department determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the department that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken on the petitions in accordance with this part.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 276, Ch. 418, L. 1995.

76-15-210. Criteria for determining administrative practicability. (1) In making its determination, the department shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.

(2) The department may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 277, Ch. 418, L. 1995.

76-15-211. Appointment of supervisors. If the department determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided in this part, as the initial governing body of the district.

History: **En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 278, Ch. 418, L. 1995.**

76-15-212. Submission of application by appointed supervisors. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(1) The two appointed supervisors shall present to the secretary of state an application signed by them, which must set forth:

(a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the department has appointed them as supervisors;

(b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(c) the term of office of each of the supervisors;

(d) the name which is proposed for the district; and

(e) the location of the principal offices of the supervisors of the district.

(2) The application must be subscribed and sworn to by each of the supervisors.

(3) (a) The application must be accompanied by a statement by the department which shall certify that:

(i) a petition was filed, notice issued, and hearing held as provided in this part;

(ii) the department determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries of the district;

(iii) notice was given and a referendum held on the question of the creation of the district; and

(iv) the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that the department determined that the operation of the proposed district is administratively practicable and feasible.

(b) The statement must also set forth the boundaries of the district as they have been defined by the department.

History: **En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 279, Ch. 418, L. 1995.**

76-15-213. Processing of application by secretary of state. (1) The secretary of state shall examine the application and statement, and if the secretary of state finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, the secretary of state shall receive and file the application and statement and shall record them in an appropriate book of record in the secretary of state's office.

(2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, the secretary of state shall

certify that fact to the department. The department shall submit to the secretary of state a new name for the district which is not subject to the defects. Upon receipt of the new name free of defects, the secretary of state shall record the application and statement with the modified name in an appropriate book of record in the secretary of state's office.

(3) The secretary of state shall make and issue to the supervisors, without cost, a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 280, Ch. 418, L. 1995.

76-15-214. Evidentiary status of certificate issued by secretary of state. In a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this chapter upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(11).

76-15-215. District as governmental subdivision and public body. When the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic, exercising public powers.

History: Ap. p. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; Sec. 76-105, R.C.M. 1947; Ap. p. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; Sec. 76-108, R.C.M. 1947; R.C.M. 1947, 76-105(part), 76-108(part).

76-15-216. Limitation on territory included in district. The boundaries of the district must include the territory as determined by the department, but may not include any area included within the boundaries of another conservation district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 281, Ch. 418, L. 1995.

Cross-References

Combination or division of districts, 76-15-803.

Part 3

Administration of Conservation Districts

76-15-301. Establishment and reorganization of supervisor areas. (1) (a) The conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county. If less than five supervisor areas are established, sufficient supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) In a district containing no incorporated municipalities, the department may reorganize the district into seven supervisor areas.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(12); (2)En. Sec. 1, Ch. 173, L. 1983; amd. Sec. 1, Ch. 473, L. 1983; amd. Sec. 2, Ch. 76, L. 1985; amd. Sec. 282, Ch. 418, L. 1995.

76-15-302. Nominations for supervisor. (1) Within 30 days after the date of issuance of a certificate of organization of a conservation district by the secretary of state, nominating petitions may be filed with the registrar, as defined in Title 13, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor.

(2) If more than twice the number of candidates are nominated than the number to be elected at the general election, the registrar shall give due notice of a nominating election to be held for the selection of candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 3, Ch. 76, L. 1985.

76-15-303. General election — election by acclamation — appointment. (1) All qualified electors within the district are eligible to vote in the election.

(2) Except as provided in subsection (5), the candidate or, if more than one supervisor position is to be filled by the general election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of the individuals nominated must be printed, as provided under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the elector's preference.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors. The ballots must be delivered to the election judges in those precincts that contain registered electors prior to each general election and each primary election, if necessary. The election judges and other election officials in the precincts shall submit the ballots to qualified electors, conduct the election, and tabulate the results of the election in the manner provided in Title 13.

(5) (a) Except as provided in subsection (5)(b), if the number of candidates nominated is equal to or less than the number of positions to be elected, the election administrator shall give notice that an election will not be held.

(b) The governing body may require that an election be held if, not more than 10 days after the close of filing by candidates, the governing body passes a resolution to hold an election and notifies the election administrator.

(c) If an election is not held, the governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If a candidate has not filed a nominating petition for the position, the governing body shall make an appointment to fill the position.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 369, Ch. 571, L. 1979; amd. Sec. 4, Ch. 76, L. 1985; amd. Sec. 2, Ch. 576, L. 1985; amd. Sec. 1, Ch. 184, L. 1995.

76-15-304. Election of supervisors. (1) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections.

(2) Nominations for the election of supervisors shall be made as provided under 76-15-302 except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(2).

76-15-305. Transition to seven supervisors. (1) At the time of reorganization under 76-15-301(2), the department shall appoint:

(a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

(b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. A district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.

(3) Nominations for the election of supervisors in a district having seven supervisors must be made as provided in 76-15-302.

(4) The term of each elected supervisor is 4 years.

(5) The election administrator in each county having a seven-supervisor district shall conduct the election for that district in a manner similar to elections conducted for a district having five supervisors.

History: En. Sec. 2, Ch. 173, L. 1983; amd. Sec. 283, Ch. 418, L. 1995.

76-15-306 through 76-15-310 reserved.

76-15-311. Governing body of district. (1) If there are no incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of five elected supervisors unless the district has been reorganized pursuant to 76-15-301(2) and 76-15-305.

(2) If there are incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years.

(b) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein.

(3) The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(1) thru (3); amd. Sec. 17, Ch. 266, L. 1979; amd. Sec. 3, Ch. 173, L. 1983; amd. Sec. 2, Ch. 473, L. 1983.

76-15-312. Term of office and vacancies. (1) The term of office of each supervisor shall be 4 years, except that the supervisors who are first appointed by the department shall be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified.

(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

(a) death;

(b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;

(c) resignation;

(d) removal from office;

(e) unexcused absence from three consecutive regular meetings of the board of supervisors;

(f) ceasing to be a resident of the district;

(g) conviction of a felony or a violation of official duties; or

(h) the decision of a court declaring void the incumbent's election or appointment.

(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.

(4) Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 1, Ch. 223, L. 1989.

76-15-313. Operation of supervisors. (1) The supervisors shall annually elect a chairman from their members.

(2) A majority of the supervisors constitute a quorum, and except as otherwise specifically provided, the concurrence of a majority in any matter within their duties is required for its determination.

(3) Upon the unanimous approval of the board of supervisors, a supervisor may receive compensation for his services, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties. However, no supervisor may receive compensation for attendance at a regularly scheduled meeting of the board of supervisors.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 533, L. 1979; amd. Sec. 3, Ch. 473, L. 1983.

76-15-314. Removal of a supervisor. A supervisor may be removed by the department and a vacancy created under 76-15-312(2)(d), upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 223, L. 1989; amd. Sec. 284, Ch. 418, L. 1995.

76-15-315. Administrative functions of the supervisors. (1) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require and shall determine their qualifications, duties, and compensation.

(2) The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as they consider proper.

(3) The supervisors shall furnish to the department copies of such ordinances, rules, orders, contracts, forms, and other documents as they adopt or employ and such other information concerning their activities as may be required in the performance of their duties under this chapter.

(4) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part).

76-15-316. Cooperation with municipalities and counties. The supervisors may invite the governing body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(7).

76-15-317. Cooperation with state agencies. Agencies of this state which shall have jurisdiction over or be charged with the administration of any state-owned lands and of any county or other governmental subdivision of the state, which shall have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted pursuant to 76-15-701 through 76-15-707 shall have the force and effect of law over all such publicly owned lands and shall be in all respects observed by the agencies administering such lands.

History: En. Sec. 13, Ch. 72, L. 1939; R.C.M. 1947, 76-113.

76-15-318. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History: En. Sec. 12, Ch. 72, L. 1939; R.C.M. 1947, 76-112.

76-15-319. Legal assistance. (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for the legal services they may require, or they may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of a conflict of interest, then the matter may be referred to the attorney general or the department.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 3, Ch. 533, L. 1979; amd. Sec. 4, Ch. 473, L. 1983; amd. Sec. 285, Ch. 418, L. 1995.

Cross-References

County Attorney to act as counsel for district, 7-4-2711.

76-15-320. Legal status of district. A conservation district and the supervisors thereof shall have the power to sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part).

76-15-321. Rulemaking authority. A conservation district and the supervisors thereof shall have the power to make and from time to time amend and repeal rules to carry into effect the purposes and powers of this chapter.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 18, Ch. 266, L. 1979.

Cross-References

Applicability of Montana Administrative Procedure Act, Title 2, ch. 4.

76-15-322. Filing of notice of organization of district. Within 10 days after the creation of the district, the supervisors of a conservation district shall cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971; R.C.M. 1947, 76-201(part).

76-15-323. Copies of notice transmitted to county commissioners. Within 30 days after receipt of such notice, the county clerk and recorder shall transmit a copy of the same to the board of county commissioners, who shall determine whether the district has been lawfully organized.

History: En. Sec. 2, Ch. 253, L. 1963; amd. Sec. 1, Ch. 152, L. 1965; R.C.M. 1947, 76-202.

Part 4
Operation of Conservation Districts

76-15-401. Study of problems relating to soil and water conservation. (1) A conservation district and the supervisors thereof shall have the power to:

(a) conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and water quality as it pertains to saline seep and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed;

(b) publish the results of such surveys, investigations, or research; and

(c) disseminate information concerning such preventive and control measures and works of improvement.

(2) In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(1).

76-15-402. Development of soil and water conservation plans. A conservation district and the supervisors thereof shall have the power to:

(1) develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, range programs, tillage and grazing practices, and changes in use of land; and

(2) publish such plans and information and bring them to the attention of occupiers of lands within the district.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(8).

76-15-403. Operation of projects and works. A conservation district and the supervisors thereof shall have the power to:

(1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including but not limited to engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in 76-15-101(3) on lands owned or controlled by this state or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(3) cooperate or enter into agreements with and, within the limits of appropriations duly made available to it by law, furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion control and prevention operations, works of improvement for flood prevention, and the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;

(4) construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

(5) take over, by purchase, lease, or otherwise, and administer any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies or by this state or any of its agencies; manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention project, or combination thereof, within its boundaries; act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention projects, or combination thereof, within its boundaries; accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies or from this state or any of its agencies and use or expend such moneys, services, materials, or other contributions in carrying on its operations.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(2) thru (4), (7), (9).

76-15-404. Acquisition and management of property. (1) A conservation district and the supervisors thereof shall have the power to obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property (real or personal) or rights or interests therein; to maintain, administer, and improve any properties acquired; to receive income from such properties; to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

(2) All such property shall be exempt from taxation by the state or any political subdivision thereof.

History: **En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(5).**

76-15-405. Limitation on acquisition, operation, or disposition of property. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: **En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(B).**

76-15-406. Furnishing of supplies and equipment. A conservation district and the supervisors thereof shall have the power to make available to land occupiers within the district, on such terms as it shall prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water.

History: **En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(6).**

76-15-407. Selection and acquisition of water storage sites. (1) Each conservation district within the state shall seek and may select at least one off-stream water storage site for the construction of a reservoir.

(2) If funding is available for a reservoir or other reclamation project, the conservation district shall acquire the site by purchase.

(3) Supervisors of conservation districts may designate sites for future construction of reservoirs. The supervisors shall designate such site by filing a legal description thereof in the office of the clerk and recorder of the county in which the site is located or the counties in which the site is located if it extends across the boundaries of two or more counties. Upon filing of such designation, the state of Montana, its agencies, or political subdivisions may not acquire the properties so designated for public purposes other than reservoir sites and may not construct any public facilities except reservoirs. Supervisors may cancel a site designation by filing notice with the clerk and recorder of the county or counties affected.

History: **En. 76-118 by Sec. 1, Ch. 418, L. 1977; R.C.M. 1947, 76-118.**

76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts.

History: **En. 76-119 by Sec. 2, Ch. 418, L. 1977; R.C.M. 1947, 76-119; amd. Sec. 286, Ch. 418, L. 1995.**

76-15-409. Purposes of off-stream storage. The reservoirs shall provide water storage for appropriators within the conservation district and shall provide water for additional beneficial uses. The reservoir may be part of a federal reclamation project and may be used to provide flood control in the district.

History: **En. 76-120 by Sec. 3, Ch. 418, L. 1977; R.C.M. 1947, 76-120.**

76-15-410. Disposition of excess water. (1) The conservation district may dispose of water in excess of that needed to meet the requirements of prior appropriators by selling the excess water to any person who will apply the water to an agreed beneficial use within the state.

(2) In making sales under this section, the district shall allocate water on the basis of priorities established by each local district in accordance with 76-15-701 through 76-15-707 according to need and beneficial use.

History: **En. 76-121 by Sec. 4, Ch. 418, L. 1977; R.C.M. 1947, 76-121.**

76-15-411. Conditions to extend benefits to nonstate lands. As a condition to the extending of any benefits under this chapter to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon.

History: **En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(11).**

Part 5

Financial Aspects of Conservation Districts Loan Program

Part Cross-References

Appropriation by County Commissioners of federal revenue sharing funds granted to conservation districts, 7-6-2218.

76-15-501. Financial management. A conservation district and the supervisors thereof shall have the power to:

(1) borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness;

(2) also refund or retire an indebtedness or lien that may exist against the district or property thereof;

(3) fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities, and materials furnished or provided, and revenues from these sources may be expended in carrying out the purposes and provisions of this chapter;

(4) cause taxes to be levied in the same manner provided for in this part for the purpose of paying any obligation of the district and to accomplish the purposes of this chapter in the manner herein provided;

(5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;

(6) establish a conservation practice loan program as provided in this part.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(12) thru (15); amd. Sec. 18, Ch. 473, L. 1983.

76-15-502. Allocation of state funds among districts. (1) Unless otherwise provided by law, all money which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized or to be organized during the ensuing biennial fiscal period.

(2) In making allocations of the money, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section and 76-15-503 from time to time among districts which may be organized after the initial allocations are made but within the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part); amd. Sec. 5, Ch. 473, L. 1983; amd. Sec. 5, Ch. 76, L. 1985.

76-15-503. Permissible uses of state money. All money allocated to a district by the department shall be available to the supervisors of the district for all administrative and other expenses of the district under this chapter and for all administrative and other expenses of the board of adjustment established or to be established by the district.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part).

76-15-504. Repealed. Sec. 8, Ch. 76, L. 1985.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(3).

76-15-505. Authorization to borrow money — limitations. (1) If, after the levy of the annual assessments for the current year, the board of supervisors finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works in the district, the board of supervisors may:

(a) borrow additional funds needed to an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the funds; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) The board of supervisors shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants may not exceed 90% of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969; R.C.M. 1947, 76-220; amd. Sec. 287, Ch. 418, L. 1995.

76-15-506. Bonds authorized — election. (1) Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this part and part 6 for the cost of works.

(2) The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. If from the returns of the election it appears that the majority of votes cast at such election was in favor of and assented to the incurring of the indebtedness, then the board of supervisors may by resolution provide for the issuance of such bonds.

(3) The authorization of such undertaking, the form, and content shall be carried out in accordance with 7-7-4426, 7-7-4427, and 7-7-4432 through 7-7-4435. Validity of such bonds, use of revenue, and refunding shall be in accordance with the provisions of 7-7-4425, 7-7-4430, 7-7-4501(2) and (3), and 7-7-4502 through 7-7-4505.

(4) Any bonds issued under this part and part 6 have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 15, Ch. 291, L. 1969; amd. Sec. 19, Ch. 431, L. 1971; R.C.M. 1947, 76-223; amd. Sec. 394, Ch. 571, L. 1979.

76-15-507. Investment of funds. The board of supervisors shall have the power and authority to direct the investment of funds in a debt service fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But all such securities shall be converted into cash in time to meet the principal on the bonds payable from such debt service fund promptly at their maturity.

History: En. Sec. 13, Ch. 291, L. 1969; R.C.M. 1947, 76-221; amd. Sec. 28, Ch. 298, L. 1983.

76-15-508. Management of surplus funds. The board of supervisors of a conservation district may invest any surplus funds of the district not needed for immediate use in the operations of the district or its activities, to pay bonds or coupons, or to meet current expenses in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in to ensure payment of any such deposit.

History: En. Sec. 14, Ch. 291, L. 1969; amd. Sec. 18, Ch. 431, L. 1971; R.C.M. 1947, 76-222; amd. Sec. 1, Ch. 135, L. 1991.

76-15-509 and 76-15-510 reserved.

76-15-511. Estimate of money to be raised by assessment. The supervisors of the district shall on or before the first Monday of July of each year furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

History: En. Sec. 4, Ch. 253, L. 1963; amd. Sec. 2, Ch. 152, L. 1965; R.C.M. 1947, 76-204.

76-15-512. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district and to fund a conservation practice loan program in those districts having elected to establish such a program.

History: En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969; R.C.M. 1947, 76-206; amd. Sec. 19, Ch. 473, L. 1983.

76-15-513. Division between counties of money to be raised by regular and special assessment. (1) If the district lies in more than one county, the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.

(2) The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969; R.C.M. 1947, 76-205.

76-15-514. Regular and special assessments. Assessments levied pursuant to this part and part 6 shall be known as regular and special assessments.

History: En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969; R.C.M. 1947, 76-207.

76-15-515. Maximum regular assessment. Except as provided in 76-15-531 and 76-15-532, the regular assessment in any one year may not exceed 1 1/2 mills on the dollar of total taxable valuation of real property within the district. The valuation must be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971; R.C.M. 1947, 76-208; amd. Sec. 6, Ch. 473, L. 1983; amd. Sec. 3, Ch. 573, L. 1993.

76-15-516. Levy of regular and special assessments. (1) The board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district regular assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(2) Subject to the conditions of 76-15-531 and 76-15-532, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district special administrative assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(3) The board of county commissioners of each county in which any portion of a project area lies may, annually at the time of levying county taxes, levy an assessment not to exceed 3 mills on the taxable real property within the project area. The levy must be known as ".... (name of the project area) special

assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

History: En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971; R.C.M. 1947, 76-209; amd. Sec. 7, Ch. 473, L. 1983; amd. Sec. 4, Ch. 573, L. 1993.

76-15-517. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting 15% for anticipated delinquencies from the total assessed value of the taxable real property in the district and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of $100, it shall be taken as a full cent.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971; R.C.M. 1947, 76-210; amd. Sec. 8, Ch. 473, L. 1983.

76-15-518. Certification of assessment to department of revenue — entry on property tax record. The board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in this part or part 6. The assessment must be certified to the department of revenue and entered on the property tax record of each county.

History: En. Sec. 11, Ch. 253, L. 1963; R.C.M. 1947, 76-211; amd. Sec. 139, Ch. 27, Sp. L. November 1993.

76-15-519. Application of general law on levy and collection. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this part and part 6, are hereby adopted and made a part hereof.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

Cross-References

County taxation, Title 7, ch. 6, part 25.

76-15-520. Liability of county officers. The county officers referred to in 76-15-519 are liable on their several official bonds for the faithful discharge of their duties under this part and part 6.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

Cross-References

Official bonds of county officers, 7-4-2212.

76-15-521. Principal county defined. "Principal county" as used in this part means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

History: En. Sec. 13, Ch. 253, L. 1963; R.C.M. 1947, 76-213.

76-15-522. Settlements by county treasurers other than of principal county. The treasurers of each of the counties other than the principal county shall, not less than twice a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

History: En. Sec. 14, Ch. 253, L. 1963; R.C.M. 1947, 76-214.

76-15-523. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district. The district may receive upon demand all or a portion of the district funds from the county treasury and deposit the funds in a bank or financial institution in such account as the board of supervisors considers appropriate for the operation and administration of the district.

History: **En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969; R.C.M. 1947, 76-215; amd. Sec. 9, Ch. 473, L. 1983.**

76-15-524. Receipt and crediting of district funds — responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district and for conservation practice loan repayments, including principal, interest, if any, administrative fees or charges for loans, and interest paid and collected on deposits or investments under a conservation practice loan program and place the same to the credit of the district. The treasurer is responsible for the official bond and for its safekeeping and disbursement, in the manner provided in this part and part 6, of the money of the district held by the treasurer.

History: **En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969; R.C.M. 1947, 76-216; amd. Sec. 20, Ch. 473, L. 1983; amd. Sec. 1, Ch. 141, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 141 near middle of first sentence substituted "for conservation practice loan repayments, including principal, interest, if any, administrative fees or charges for loans, and interest paid and collected on deposits or investments" for "for all loan repayments and administrative fees or charges"; and made minor changes in style. Amendment effective March 25, 1997.

Retroactive Applicability: Section 5, Ch. 141, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all loans issued before [the effective date of this act] [effective March 25, 1997] and to all funds that are on deposit in a conservation practice loan account."

76-15-525. Payment of district money — warrants. The treasurer of the principal county shall pay out money of the district only upon warrants of the county auditor or, in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district and signed by at least two of such supervisors.

History: **En. Sec. 17, Ch. 253, L. 1963; R.C.M. 1947, 76-217.**

76-15-526. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand and the receipts and disbursements since his last report. Such report shall be verified.

History: **En. Sec. 18, Ch. 253, L. 1963; R.C.M. 1947, 76-218.**

76-15-527. Purpose of expenditures. All money collected under 76-15-511 through 76-15-526, 76-15-531, and 76-15-532 must be expended for the purposes provided in Title 76, chapter 15.

History: **En. Sec. 19, Ch. 253, L. 1963; R.C.M. 1947, 76-219; amd. Sec. 21, Ch. 473, L. 1983; amd. Sec. 5, Ch. 573, L. 1993.**

76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied from the date on which such assessment is levied. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: **En. Sec. 23, Ch. 291, L. 1969; R.C.M. 1947, 76-231; amd. Sec. 19, Ch. 266, L. 1979.**

Cross-References

Liens, Title 71, ch. 3.

76-15-529. Assessments unaffected by misnomers and mistakes relating to ownership. When under the provisions of this part and part 6 special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: **En. Sec. 24, Ch. 291, L. 1969; R.C.M. 1947, 76-232.**

76-15-530. Conservation district appropriations — administration. (1) The state treasurer shall draw warrants payable from appropriations of allocations authorized as provided under 15-35-108 on order from the department.

(2) The department shall administer the conservation district appropriations referred to in subsection (1). The money must be distributed to the conservation districts on the basis of need. A conservation district may submit an application to the department for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants.

History: **En. Sec. 2, Ch. 479, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 288, Ch. 418, L. 1995; amd. Sec. 67, Ch. 509, L. 1995.**

76-15-531. Special administrative assessment permitted — voter approval. (1) (a) In addition to the levy authorized in 76-15-515 and 76-15-516(3), the supervisors of a conservation district may levy an annual special administrative assessment, not to exceed the amount determined under subsection (1)(b) each year, for administrative costs and expenses of the district if, at a regularly scheduled election or special election, the qualified electors of the district approve the imposition of the additional assessment.

(b) The annual levy authorized by this section may not exceed the difference between the amount raised by the annual mill levy authorized under 76-15-515 and $20,000.

(c) Nonmill-levy revenue that is distributed based on the relative proportion of mill levies may not be distributed to the special administrative assessment.

(2) The special administrative assessment question may be presented to the qualified electors of the district by resolution of the supervisors.

(3) If the conservation district is located in more than one county, the special administrative assessment question must be presented to and approved by the qualified electors who reside in the district from each county.

(4) The resolution referring the special administrative assessment question must state:

(a) the rate of the assessment;

(b) the amount of money anticipated to be raised by the assessment; and

(c) the purposes for which the special administrative assessment revenue may be used.

History: **En. Sec. 1, Ch. 573, L. 1993.**

76-15-532. Limitations — reduction or repeal of special administrative assessment. (1) In each year following the approval of the special administrative assessment as provided in 76-15-531, the rate of the levy imposed for the special administrative assessment may not raise more revenue than was proposed in the resolution and approved by the qualified electors of the district.

(2) If the supervisors of the district reduce the amount of the special administrative assessment, they may not raise the assessment without the approval of the qualified electors of the district.

(3) On or before the second Monday in July, a petition, signed by at least 50% of the eligible voters within the district, calling for a reduction in or the repeal of the special administrative assessment for the ensuing fiscal year may be presented to the supervisors. Following verification of the signatures on the petition, the supervisors shall reduce or repeal the administrative assessment as specified in the petition.

History: **En. Sec. 2, Ch. 573, L. 1993.**

76-15-533 through 76-15-540 reserved.

76-15-541. Conservation practice loan program — definition. (1) A conservation district may establish and administer a conservation practice loan program pursuant to 76-15-541 through 76-15-547.

(2) A conservation practice loan may be made to a land occupier who is an agriculture producer within the exterior boundaries of the district. The conservation practice must be constructed, operated, developed, and maintained within the district.

(3) A conservation practice is the construction, operation, development, or maintenance of an erosion control and prevention operation, a work of improvement for flood prevention, and the conservation, development, use, and disposal of water within a district in furtherance of the purposes and policies of this chapter. Conservation practices include those practices pertaining to acceptable land use conversion as determined by a majority of the district supervisors with the advice of the United States natural resources conservation service.

History: **En. Sec. 11, Ch. 473, L. 1983; amd. Sec. 281, Ch. 42, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 42 in (3), at end, substituted "natural resources conservation service" for "soil conservation service". Amendment effective March 12, 1997.

76-15-542. Conservation practice loan account. (1) The supervisors of a district may allocate a portion of the regular assessment for each fiscal year to a segregated and separate conservation practice loan account within the treasury of the principal county for the purpose of providing funds for conservation practice loans.

(2) Conservation practice loan repayments, including principal, interest, if any, and administrative fees or charges for loans must be deposited in the conservation practice loan account. Interest earned from deposits or

investment of funds must be credited to the conservation practice loan account unless the district directs the county treasurer to deposit the interest earned into the conservation district general operating account.

(3) The funds in the conservation practice loan account may be used for conservation practice loans and for the administrative expenses of a conservation practice loan program. Interest paid and collected on the deposits or investments of a conservation practice loan account may be used for the general operations of a conservation district.

History: En. Sec. 12, Ch. 473, L. 1983; amd. Sec. 2, Ch. 141, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 141 in (2), near middle of first sentence after "interest", inserted "if any" and inserted second sentence directing crediting of interest to certain accounts; in (3) inserted second sentence allowing use of interest for general operations of a conservation district; and made minor changes in style. Amendment effective March 25, 1997.

Retroactive Applicability: Section 5, Ch. 141, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all loans issued before [the effective date of this act] [effective March 25, 1997] and to all funds that are on deposit in a conservation practice loan account."

76-15-543. Application for loan. (1) An application for a loan must be in the form prescribed by the district supervisors and contain or be accompanied by any information necessary to adequately describe the proposed conservation practice and necessary for evaluation of the proposed conservation practice under the criteria contained in 76-15-544 and 76-15-545.

(2) The application must include a conservation plan, which may be prepared in consultation with the United States natural resources conservation service.

History: En. Sec. 13, Ch. 473, L. 1983; amd. Sec. 282, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), at end, substituted "natural resources conservation service" for "soil conservation service". Amendment effective March 12, 1997.

76-15-544. Eligibility for loan. A district may award a loan to a land occupier to finance a conservation practice only if a majority of the district supervisors find, based on the application and the supervisors' investigation and evaluation of the proposal, that:

(1) the conservation practice will be economically feasible;

(2) the conservation practice will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(3) the applicant has adequate financial resources to construct, operate, develop, and maintain the conservation practice; and

(4) the applicant is credit-worthy and is able and willing to enter into a contract with the district for loan repayment and for construction, operation, development, and maintenance of the proposed conservation practice.

History: En. Sec. 14, Ch. 473, L. 1983.

76-15-545. Criteria for evaluation of loan applicants — preferences. (1) The district supervisors shall apply the following criteria in ranking applications for a conservation practice loan that is eligible for funding under 76-15-544:

(a) the extent and desirability of the conservation need and resource benefit as determined in the district's annual and long-range plans;

(b) the feasibility and practicality of the project;

(c) the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and recreation;

(d) the extent and desirability of associated public benefits in addition to any private benefits the project or activity may provide; and

(e) any other factor that, in the district supervisors' judgment, is important to the evaluation of the conservation practice in light of the purposes, policies, and objectives of this chapter.

(2) Among applications for a loan in which the proposed conservation practices are substantially equal in ranking under subsection (1), a district shall give preference to:

(a) applicants who have not previously received a conservation practice loan; and

(b) applications for a group or cooperative conservation practice.

History: En. Sec. 15, Ch. 473, L. 1983.

76-15-546. Terms and conditions of loan. A conservation practice loan is subject to the following terms and conditions:

(1) The district shall obtain a security interest in real estate that would be obtained by a reasonable, careful, and prudent lender.

(2) The term of the loan may not be greater than the life of the project and may not exceed 30 years.

(3) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at the borrower's expense. All costs incident to the loan and loan closing must be paid by the borrower.

(4) A conservation practice must be completed according to United States natural resources conservation service standards and specifications, if applicable.

History: En. Sec. 16, Ch. 473, L. 1983; amd. Sec. 283, Ch. 42, L. 1997; amd. Sec. 3, Ch. 141, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (4) substituted "natural resources conservation service" for "soil conservation service"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 141 in (3), in middle of second sentence after "closing", deleted "other than administrative costs of the district"; in (4) substituted "United States natural resources conservation service" for "United States soil conservation service"; and made minor changes in style. Amendment effective March 25, 1997.

Retroactive Applicability: Section 5, Ch. 141, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all loans issued before [the effective date of this act] [effective March 25, 1997] and to all funds that are on deposit in a conservation practice loan account."

76-15-547. Rules for loan program. The district shall adopt rules:

(1) prescribing the form and content of applications for loans and plans for the resource conservation practice;

(2) governing the application of the criteria and preferences for awarding loans;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted;

(5) prescribing the conditions for making loans;

(6) establishing the interest rate, if any, for the loans; and

(7) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.

History: En. Sec. 17, Ch. 473, L. 1983; amd. Sec. 4, Ch. 141, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 141 in introductory clause, after "rules", deleted "in accordance with the Montana Administrative Procedure Act"; and in (6) inserted "if any". Amendment effective March 25, 1997.

Retroactive Applicability: Section 5, Ch. 141, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all loans issued before [the effective date of this act] [effective March 25, 1997] and to all funds that are on deposit in a conservation practice loan account."

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 6

Project Areas

76-15-601. Establishment of project areas — special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, cooperative grazing association, or other special purpose district or by more than 50% of the qualified electors affected thereby, the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969; amd. Sec. 20, Ch. 431, L. 1971; R.C.M. 1947, 76-224.

76-15-602. Hearing on petition to establish project area. Upon receipt of a petition to establish a project area, the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-603. Investigation of need for project area. Prior to the hearing, the board or boards of supervisors shall make or cause to be made an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-604. Protest procedure. At any time within 15 days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area, or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse thereon the date of its receipt by him.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971; R.C.M. 1947, 76-226(part).

76-15-605. Board decision. (1) The report of 76-15-603 shall be presented and read at the hearing on the petition.

(2) At the public hearing on the petition, the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive except when owners of more than 50% of the land in the proposed project area protest the project. If owners of more than 50% of the land protest the project, no further action may be taken for a period of 6 months from the date of the hearing, after which a new petition may be filed.

(3) If the board or boards of supervisors find that it is not feasible, desirable, or practical to establish the proposed project area, they shall make an order denying the petition and shall state therein their reasons for so doing.

(4) If, however, the board finds that the project is desirable, proper, and necessary, it shall grant the petition, establish the boundaries of the proposed project area, and notify the county election administrator that an election is to be held in the proposed area for the purpose of determining whether or not the project area shall be created.

History: En. Secs. 17, 18, Ch. 291, L. 1969; amd. Secs. 21, 22, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part), 76-226(part); amd. Sec. 395, Ch. 571, L. 1979.

76-15-606. Election procedure. (1) The question shall be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" shall appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of the project area.

(2) No person shall be entitled to vote at the election unless such person possesses all the qualifications required of electors under Title 13 and resides within the boundaries of the proposed project area and the county in which he proposes to vote.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-607. Notice of creation of project area. If the majority of the votes cast at the election are in favor of creating a project area, the board or boards of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-608. Description of work or project area. In all resolutions, notices, orders, and determinations, it shall be sufficient to briefly describe the work or the project area or both.

History: En. Sec. 19, Ch. 291, L. 1969; R.C.M. 1947, 76-227.

76-15-609. Area included in project area. A project area may include a part or all of any district or may include areas in more than one district.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-610. Administration of project area. The affairs of a project area shall be administered by the board or boards of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-611. Federal authority unaffected. (1) The provisions of this part do not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions. It is an express purpose and intent of this part to aid but not to interfere with the government of the United States or any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control.

(2) The provisions of this part may not be construed to impair, limit, or repeal any right whatsoever which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights. It is a purpose of this part expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: En. Sec. 22, Ch. 291, L. 1969; R.C.M. 1947, 76-230; amd. Sec. 20, Ch. 266, L. 1979.

76-15-612. Duty to maintain improvements. Whenever any project petitioned for or created by the state or federal government has been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board or boards of supervisors under whose jurisdiction the project area was created to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise in the way or manner as the board shall deem suitable and proper.

History: En. Sec. 25, Ch. 291, L. 1969; R.C.M. 1947, 76-233.

76-15-613 through 76-15-620 reserved.

76-15-621. Estimate of expenses of project area. (1) When a project area has been created, the board or boards of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1 in each year thereafter shall estimate project area expenses for the fiscal year ensuing.

(2) Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights-of-way, easements, or other interest in property deemed necessary for the construction, operation, and maintenance of any projects therein.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-622. Financing of project area expenses. (1) The expense of the project area may, in the discretion of the board or boards of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments.

(2) Upon adoption of a budget covering necessary expenses, the board or boards of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners of each county in the project area and the city auditor of each city in the project area.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-623. Administration of special assessment. (1) When the board or boards of supervisors have determined that a special assessment is necessary, the board of county commissioners of such county in which there lies any portion of a project area shall annually at the time of levying county taxes levy a special assessment of the taxable real property in the project area, not to exceed 3 mills. It shall be known as the "....(name of district) soil and water conservation district special assessment" and shall be sufficient to raise the income reported to it in the estimate of the supervisors.

(2) Each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all the lands to be assessed.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-624. Disposition of funds — insufficient revenue. (1) Funds produced each year by this special tax levy shall be available until spent.

(2) If this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-625. Limitation on special assessment. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed 40 years.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

Part 7

Land Use Regulations

76-15-701. Adoption of land use regulations. (1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

(2) The supervisors shall not have authority to enact such land use regulations into law until after they shall have caused due notice to be given of their intention to order a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the supervisors have considered the result of such referendum.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(A); amd. Sec. 396, Ch. 571, L. 1979.

Cross-References

Cooperation with state agencies, 76-15-317.

76-15-702. Referendum on proposed land use regulations. (1) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.

(2) The notices of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots upon which the words "For approval of proposed ordinance No. ...., prescribing land use regulations

for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. ...., prescribing land use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance.

(3) The supervisors shall publish the result of the referendum. All registered electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(B); amd. Sec. 397, Ch. 571, L. 1979.

76-15-703. Voter approval of proposed regulations required. The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-704. Regulations to have force of law. Land use regulations prescribed in ordinances adopted pursuant to the provisions of 76-15-701 through 76-15-707 by the supervisors of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all occupiers of lands within such district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-705. Alteration of regulations. (1) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land use regulations prescribed in any ordinance adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 be amended, supplemented, or repealed.

(2) Land use regulations prescribed in any ordinance adopted pursuant to the provisions of 76-15-701 through 76-15-707 shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in 76-15-701 through 76-15-707 for adoption of land use regulations.

(3) Referenda on adoption, amendment, supplementation, or repeal of land use regulations shall not be held more often than once in 6 months.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-706. Contents of land use regulations. (1) The regulations to be adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 may include:

(a) provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

(b) provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water conserving and erosion preventing plants, trees, and grasses, forestation and reforestation;

(c) specifications of cropping and range programs and tillage and grazing practices to be observed;

(d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(e) provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion, threatened or existing, grazing and cropping programs, tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-707. Publication of regulations. Copies of land use regulations adopted under the provisions of 76-15-701 through 76-15-707 shall be printed and made available to all occupiers of land within the district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-708. Power to determine compliance with regulations. After a complaint shall have been filed with the supervisors charging a violation of the regulations, the supervisors shall have authority to go upon any lands within the district to determine whether land use regulations adopted under the provisions of 76-15-701 through 76-15-707 are being observed.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(1).

76-15-709. Enforcement of regulations — petition to district court. Where the supervisors of any district shall find that any of the provisions of land use regulations prescribed in any ordinance adopted in accordance with the provisions of 76-15-701 through 76-15-707 are not being observed on particular lands and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present a petition, duly verified, to the district court of the county in which the lands of the defendant may lie:

(1) setting forth:

(a) the adoption of the ordinance prescribing land use regulations;

(b) the failure of the defendant to observe such regulations and to perform particular work, operations, or avoidances as required thereby; and

(c) that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district; and

(2) praying the court:

(a) to require the defendant to perform the work, operations, or avoidances within a reasonable time; and

(b) to order that, if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations, or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the defendant.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(2).

76-15-710. Court procedure after petition is filed. (1) Upon the presentation of such petition, the court shall cause process to be issued against the defendant and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(2) In all cases where the person in possession of lands who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such land into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of 10% a year, from the defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court, the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of 10% a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(3) thru (5); amd. Sec. 6, Ch. 76, L. 1985.

76-15-711 through 76-15-720 reserved.

76-15-721. Board of adjustment. (1) When the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with

76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.

(2) The board of adjustment consists of three members, each to be appointed for a term of 3 years, except that the members first appointed must be appointed for terms of 1, 2, and 3 years, respectively.

(3) The members of each board of adjustment must be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established. The members may be removed by the department, upon notice and hearing, only for neglect of duty or malfeasance in office. The hearing must be conducted jointly by the department and the supervisors of the district. Employees of the department and the supervisors of the district are ineligible to appointment as members of the board of adjustment.

(4) Vacancies in the board of adjustment must be filled in the same manner as original appointments and are for the unexpired term of the member whose term becomes vacant.

(5) The members of the board of adjustment receive compensation for their services at the rate of $25 a day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the presiding officer of the board.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(1); amd. Sec. 7, Ch. 76, L. 1985; amd. Sec. 289, Ch. 418, L. 1995.

76-15-722. Operation of board of adjustment. (1) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this chapter and with the ordinance establishing the board of adjustment.

(2) The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board constitute a quorum. The chairman or in his absence such other member of the board as he may designate to serve as acting chairman may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(2); amd. Sec. 21, Ch. 266, L. 1979.

76-15-723. Petition for a variance. (1) Any qualified elector may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and praying the board to authorize a variance from the terms of the land use regulations in the application of the regulations to the lands occupied by the petitioner.

(2) Copies of the petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the department.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-724. Hearing on petition for a variance. (1) The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given.

(2) The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board of adjustment determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board of adjustment may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that:

(a) will relieve the great practical difficulties or unnecessary hardship;

(b) will not be contrary to the public interest; and

(c) will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 22, Ch. 266, L. 1979; amd. Sec. 290, Ch. 418, L. 1995.

76-15-726. Appeal to district court from board decision. (1) A petitioner aggrieved by an order of the board of adjustment granting or denying, in whole or in part, the relief sought, the supervisors of the district, or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board of adjustment be modified or set aside.

(2) A copy of the petition must immediately be served upon the parties to the hearing before the board of adjustment, and after service the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board of adjustment, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board of adjustment.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 291, Ch. 418, L. 1995.

76-15-727. Court proceedings. (1) Upon the filing, the court shall cause notice of the filing to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined in the proceedings, may grant temporary relief as it considers just and proper, and make and enter a decree enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order of the board of adjustment.

(2) A contention that is not urged before the board of adjustment may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board of adjustment as to the facts, if supported by evidence, are conclusive.

(3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board of adjustment, the court may order the additional evidence to be taken before the board of adjustment and to be made a part of the transcript. The board of adjustment may modify its findings as to the facts or make new findings, taking into consideration the additional evidence taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

(4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 292, Ch. 418, L. 1995.

Part 8

Alteration and Termination of Conservation Districts

76-15-801. Change of district name. Petitions for changing the name of a district organized under this chapter may be filed with the department. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the department determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of that determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of the certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(1).

76-15-802. Procedure to add territory to a district. Petitions for including additional territory within an existing district may be filed with the department, and the proceedings provided for in part 2 in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in part 2 for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion is less than 10, the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(10).

76-15-803. Combination or division of districts. (1) A petition may be filed with the department for the division of any district, for the combination of any two or more districts, or for the division of a district and the combination of any divided part of a district with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition must be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. When a petition is filed, the department shall within 30 days give notice of a public hearing on the petition. All qualified electors within the affected districts and all other interested parties are entitled to attend the hearing and be heard. After the hearing, the department shall determine from the hearing record whether the proposed division, the combination, or the division and combination of territory is administratively practicable and feasible. In making the determination, the department shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(2) If the department determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the department shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the department shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.

(3) When a district is divided, the supervisors of the district shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion in the district, and other relevant factors. A statement of the allocation must be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. If the supervisors fail to make or to agree upon the allocation, the division must be made by the department after a hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations.

History: **En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(2) thru (4); amd. Sec. 293, Ch. 418, L. 1995.**

76-15-804. Petition to discontinue all or part of district. (1) At any time after 5 years after the organization of a district under this chapter, 10% or more of the qualified electors within the boundaries of the district may file a petition with the department requesting the termination of the operations of the district or a part of the district and the discontinuance of the existence of the district or that part of the district.

(2) The department may conduct public meetings and public hearings upon the petition that are necessary to assist it in the consideration of the petition.

History: **En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(1); amd. Sec. 10, Ch. 473, L. 1983; amd. Sec. 294, Ch. 418, L. 1995.**

76-15-805. Referendum on question of discontinuance. (1) Within 60 days after the petition has been received by the department, it shall give due notice of the holding of a referendum and shall supervise the referendum and issue appropriate regulations governing the conduct thereof. The question is to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" and "Against terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" shall appear with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district or a part of the district.

(2) All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relative thereto shall invalidate the referendum or the result thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

History: **En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(2).**

76-15-806. Decision in case of petition for discontinuance of entire district. (1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and shall consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the department determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.

(3) If the department determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

History: **En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(a); amd. Sec. 295, Ch. 418, L. 1995.**

76-15-807. Decision in case of petition for discontinuance of portion of district. (1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and shall consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.

(2) If the department determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.

(3) If the department determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(b); amd. Sec. 296, Ch. 418, L. 1995.

76-15-808. Criteria for decision on discontinuance. (1) In making the determination, the department shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) The department may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(4); amd. Sec. 297, Ch. 418, L. 1995.

76-15-809. Procedure to terminate district. (1) Upon certification of the department that the department has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.

(2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay the proceeds of the sale into the state treasury.

(3) The supervisors shall file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the department, setting forth the determination of the department that the continued operation of the district or part of the district is not administratively practicable and feasible. The application must state that the property of the district or part of the district has been disposed of and the proceeds paid to the treasury as provided in 76-15-804 through 76-15-810 and must set forth a full accounting of the properties and proceeds of the sale.

(4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in the secretary of state's office.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(5); amd. Sec. 298, Ch. 418, L. 1995.

76-15-810. Effect of termination. (1) Upon issuance of a certificate of dissolution under 76-15-809, all ordinances and regulations theretofore adopted and in force within the district or in that part of the district are void.

(2) All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts if the total district is discontinued. In this case the department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise as the supervisors of the district would have had.

(3) The dissolution does not affect the lien of any judgment entered under 76-15-708 through 76-15-710 or the pendency of an action instituted under those sections, and the department succeeds to all rights and obligations of the district or supervisors as to those liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(6).

CHAPTER 16

GRAZING DISTRICTS

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76-16-316. Sale of trespassing livestock.
76-16-317. Disposition of sale proceeds.
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76-16-321. Construction of trespass and fence provisions.
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Part 4 — Grazing Permit System

76-16-401. Distribution of grazing preferences.
76-16-402. Conversion of temporary permittee lands to dependent commensurate property.
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76-16-404. Application for grazing preferences.
76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property.
76-16-406. Transfer of preferences.
76-16-407. Processing of application for transfer.
76-16-408. Effect of transfer of preference.
76-16-409. Transfer of underlying property.
76-16-410. Compensation to district for range improvements.
76-16-411. Grazing permits to owners of land not controlled by district.
76-16-412. Revocation of preferences upon failure to obtain permits, pay fees, or obey rules.
76-16-413. Effect of revocation.
76-16-414. Equalization of district assets.
76-16-415. Application to trespass actions.

Part 1
General Provisions

Part Cross-References

Disposition of Taylor Grazing Act funds, 17-3-221, 17-3-222.

76-16-101. Short title. This chapter may be cited as the "Grass Conservation Act".

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit grazing districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein.

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months old or over.

(2) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees.

(3) "Commensurate property" means land that is privately owned or controlled and that is not range.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Dependent commensurate property" is commensurate property that:

(a) requires the use of range in connection with it to maintain its proper use;

(b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of the districts.

(6) "Grazing preference" is a right to obtain a grazing permit from a state district.

(7) "Permits" are evidence of grazing privileges granted by state districts.

(8) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

(9) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(10) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members.

History: En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974; R.C.M. 1947, 46-2302(part); amd. Sec. 299, Ch. 418, L. 1995; amd. Sec. 2, Ch. 244, L. 1997.

Compiler's Comments

1997 Amendment Uncodified — Early Termination — Section Uncodified: Section 2, Ch. 244, L. 1997, inserted new (1) that provided: "(1) "Advisory committee" means the Montana grass conservation advisory committee created in [section 1] [not codified]"; and made minor changes in style. Section 5, Ch. 244, L. 1997, provided: "[This act] terminates January 1, 1999." Because of the early termination date, the Code Commissioner has determined not to codify the amendment made by sec. 2, Ch. 244, L. 1997, and [section 1]. Section 1 provided: "**Section 1. Montana grass conservation advisory committee established.** (1) There is a Montana grass conservation advisory committee.

(2) The director of the department, giving equal consideration to both large and small operators, shall appoint six people to serve on the advisory committee and shall serve as an ex officio member of the committee. The committee must include:

(a) two members, one member who must be a member of the board of directors of the Montana association of state grazing districts and one member who is either an officer or serves on the board of directors of a state district;

(b) two members who hold active preference rights within state districts; and

(c) two members who are secretaries for state districts.

(3) The advisory committee shall:

(a) elect from its membership a presiding officer and a vice-presiding officer;

(b) convene meetings as the members consider appropriate and solicit comments and suggestions from state district boards of directors, district members, and the public;

(c) provide notices of all meetings to the state district secretaries at least 14 days before the meeting;

(d) analyze issues regarding the function of state grazing districts and identify services that the districts may need to assist them in functioning effectively; and

(e) analyze Title 76, chapter 16, governing grazing districts and other laws that may affect grazing districts, and submit a report discussing findings and recommendations for changes to existing laws on or before October 1, 1998, to the director and the 1999 legislature.

(4) The members of the advisory committee serve for no salary but must be compensated for mileage and per diem as provided in 2-18-501 through 2-18-512 in fulfilling their duties as provided in this section.

(5) The term of office for each member is from [the effective date of this act] to January 1, 1999."

76-16-104. Role of the department. (1) The department shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of districts that may be incorporated under this chapter.

(2) The department may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies.

History: En. Secs. 1, 17, Ch. 208, L. 1939; amd. Secs. 35, 47, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part), 46-2317; amd. Sec. 300, Ch. 418, L. 1995; amd. Sec. 3, Ch. 244, L. 1997.

Compiler's Comments

1997 Amendment Uncodified — Early Termination — Section Uncodified: Section 3, Ch. 244, L. 1997, at the end of (1) inserted "and support the advisory committee established in [section 1] [not codified]"; and made minor changes in style. Section 5, Ch. 244, L. 1997, provided: "[This act] terminates January 1, 1999." Because of the early termination date, the Code Commissioner has determined not to codify the amendment made by sec. 3, Ch. 244, L. 1997, and [section 1]. Section 1 provided: "**Section 1. Montana grass conservation advisory committee established.** (1) There is a Montana grass conservation advisory committee.

(2) The director of the department, giving equal consideration to both large and small operators, shall appoint six people to serve on the advisory committee and shall serve as an ex

officio member of the committee. The committee must include:

(a) two members, one member who must be a member of the board of directors of the Montana association of state grazing districts and one member who is either an officer or serves on the board of directors of a state district;

(b) two members who hold active preference rights within state districts; and

(c) two members who are secretaries for state districts.

(3) The advisory committee shall:

(a) elect from its membership a presiding officer and a vice-presiding officer;

(b) convene meetings as the members consider appropriate and solicit comments and suggestions from state district boards of directors, district members, and the public;

(c) provide notices of all meetings to the state district secretaries at least 14 days before the meeting;

(d) analyze issues regarding the function of state grazing districts and identify services that the districts may need to assist them in functioning effectively; and

(e) analyze Title 76, chapter 16, governing grazing districts and other laws that may affect grazing districts, and submit a report discussing findings and recommendations for changes to existing laws on or before October 1, 1998, to the director and the 1999 legislature.

(4) The members of the advisory committee serve for no salary but must be compensated for mileage and per diem as provided in 2-18-501 through 2-18-512 in fulfilling their duties as provided in this section.

(5) The term of office for each member is from [the effective date of this act] to January 1, 1999."

76-16-105. Powers of the department. The department may:

(1) prepare and standardize various forms to be used by the state districts and supervise or regulate the organization and operation of state districts;

(2) issue citations directed to any person requiring the person's attendance before the department and subpoena witnesses and pay expenses that would be allowed in a court action;

(3) require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department;

(4) hold hearings on any matters affecting the department;

(5) require state districts to furnish itemized financial reports annually;

(6) cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part); amd. Sec. 301, Ch. 418, L. 1995; amd. Sec. 4, Ch. 244, L. 1997.

Compiler's Comments

1997 Amendment Uncodified — Early Termination — Section Uncodified: Section 4, Ch. 244, L. 1997, inserted (7) that provided: "(7) provide technical and administrative support to the advisory committee in completing its duties and generating a report"; and made minor changes in style. Section 5, Ch. 244, L. 1997, provided: "[This act] terminates January 1, 1999." Because of the early termination date, the Code Commissioner has determined not to codify the amendment made by sec. 4, Ch. 244, L. 1997, and [section 1]. Section 1 provided: "**Section 1. Montana grass conservation advisory committee established.** (1) There is a Montana grass conservation advisory committee.

(2) The director of the department, giving equal consideration to both large and small operators, shall appoint six people to serve on the advisory committee and shall serve as an ex

officio member of the committee. The committee must include:

(a) two members, one member who must be a member of the board of directors of the Montana association of state grazing districts and one member who is either an officer or serves on the board of directors of a state district;

(b) two members who hold active preference rights within state districts; and

(c) two members who are secretaries for state districts.

(3) The advisory committee shall:

(a) elect from its membership a presiding officer and a vice-presiding officer;

(b) convene meetings as the members consider appropriate and solicit comments and suggestions from state district boards of directors, district members, and the public;

(c) provide notices of all meetings to the state district secretaries at least 14 days before the meeting;

(d) analyze issues regarding the function of state grazing districts and identify services that the districts may need to assist them in functioning effectively; and

(e) analyze Title 76, chapter 16, governing grazing districts and other laws that may affect grazing districts, and submit a report discussing findings and recommendations for changes to existing laws on or before October 1, 1998, to the director and the 1999 legislature.

(4) The members of the advisory committee serve for no salary but must be compensated for mileage and per diem as provided in 2-18-501 through 2-18-512 in fulfilling their duties as provided in this section.

(5) The term of office for each member is from [the effective date of this act] to January 1, 1999."

76-16-106. Department fees. (1) The department may impose fees against the several state grazing districts of the state in an amount not in excess of 15 cents per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses incurred by the department in carrying out its powers and duties under this chapter.

(2) These fees shall be held in the state special revenue fund to be expended by order and direction of the department for the administration of the department's functions under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the district is provided with a full report from the department of all money collected and expended by it for its fiscal year next preceding that date, the department may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 52, Ch. 253, L. 1974; R.C.M. 1947, 46-2331; amd. Sec. 1, Ch. 34, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of range shall be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the district. The department may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts. The department shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed.

History: En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974; R.C.M. 1947, 46-2332; amd. Sec. 2, Ch. 218, L. 1979.

76-16-108. Nature of rights. (1) Preferences or rights under this chapter through the creation of the district or the issuance of permits or preferences are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the district excepting as herein provided.

(2) Any person who chooses to become a member of any state district is bound by all the provisions of this chapter and is limited to the statutory remedies therein contained, and no court shall have jurisdiction to consider any right claimed under this chapter excepting only by judicial review from the final decision of the commission as herein provided.

History: (1)En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; Sec. 46-2314, R.C.M. 1947; (2)En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3,

Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; Sec. 46-2308, R.C.M. 1947; R.C.M. 1947, 46-2308(part), 46-2314(3).

76-16-109. Appeal procedure. (1) Notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the district.

(2) A person affected by the decision of a state district may appeal to the department, and the department shall hear and decide all those appeals. An appeal from the decision of the district to the department may be taken by filing written notice of the appeal with the department, by filing a copy of the notice of appeal with the secretary of the district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the department must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the department may, at its discretion and for good cause shown, permit additional testimony to be submitted.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(part); amd. Sec. 302, Ch. 418, L. 1995.

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-16-110. Administrative procedure act applicable. The Montana Administrative Procedure Act applies to this chapter.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(3).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

76-16-111. What constitutes receipt of notice. In all cases where notices are given permittees under this chapter by registered or certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices shall be considered received by the permittee when deposited in the United States post office by the district or by the department.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(8).

Part 2

Establishment of Districts

76-16-201. Procedure to incorporate state district. (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the department together with a plat showing the proposed boundaries of the area.

(2) The statement shall set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The department may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the department shall fix a time and place of a hearing for approval within the district or county, which may not be less than 30 days or more than 60 days after receipt of the statement.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-202. Notice and hearing on question of incorporation. (1) The persons deciding to incorporate the state grazing district shall cause notice of the hearing to be given by publishing a notice prescribed by the department once a week for 2 consecutive weeks, the first publication to be at least 30 days prior to the date of hearing, in a newspaper of general circulation in the area.

(2) The department shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 303, Ch. 418, L. 1995.

76-16-203. Certificate of approval. If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the district, the department may issue a certificate of approval.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 304, Ch. 418, L. 1995.

76-16-204. Articles of incorporation. (1) Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees.

(2) The articles shall be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the department, shall substantially state the following:

(a) the name of the state district, the last four words of which shall be "cooperative state grazing district";

(b) the county or counties in which the state district is located and the place where the principal office and business of the state district will be conducted;

(c) the membership fee for each member of the state district, which may not be more than $5;

(d) the term for which the state district is incorporated, which may not exceed 40 years;

(e) the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district;

(f) the powers of the state district, which may not be inconsistent with this chapter;

(g) the officers of the state district, their principal duties, and the principal duties of the board of directors;

(h) the purpose for which the state district is incorporated.

History: **En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).**

Cross-References

Formation of nonprofit corporation, Title 35, ch. 2, part 2.

76-16-205. Issuance of certificate of incorporation. If the articles substantially comply with the requirements set forth in 76-16-204 and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation.

History: **En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).**

76-16-206. Amending articles of incorporation. (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the department. The only notice of the meeting which is necessary is the notice of meetings of members as required by the bylaws of the district. The amended articles of incorporation and bylaws shall be submitted to the department for approval. Upon approval, the department shall issue a certificate of approval. The amended articles of incorporation shall be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment shall be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the district possesses the same powers and shall be subject to the same obligations as if incorporated under this chapter.

History: **En. Secs. 11, 18, Ch. 208, L. 1939; amd. Secs. 41, 48, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part), 46-2318.**

76-16-207. Filing of map or plat of district. A state district shall, upon completion of its organization, file with the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the department after a hearing, the state district shall file with the county clerk or clerks a map or plat indicating the changed boundaries.

History: **En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part); amd. Sec. 305, Ch. 418, L. 1995.**

76-16-208. Adoption of bylaws. A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the department. The bylaws may be amended or revised with the approval of the department.

History: **En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974; R.C.M. 1947, 46-2315.**

76-16-209. Alteration of district. (1) A state district may change the boundaries of the district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the department after a hearing.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the department after a hearing.

History: **En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(11); amd. Sec. 306, Ch. 418, L. 1995.**

76-16-210. Request for dissolution of district. A state district, with the written consent of three-fourths of its permittee members, may at any time request the department to dissolve the state district.

History: **En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 307, Ch. 418, L. 1995.**

76-16-211. Dissolution of district. (1) If a state district ceases to function and it appears to the department that the reinstatement and future operation of the district is no longer feasible, beneficial, and desirable to those who own or control more than 50% of the lands included in the district, the department, after a hearing and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district.

(2) A notice of the dissolution must be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located.

History: **En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(1)(b); amd. Sec. 308, Ch. 418, L. 1995.**

76-16-212. Distribution of district assets. (1) When a hearing on the request for dissolution has been held before the department and the board's consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made with the approval of the department to creditors up to the amount of their claims. Distribution shall then be made with the approval of the department to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district.

History: **En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).**

76-16-213. Final report on dissolution proceedings. A final report of all dissolution proceedings must be made to the department by the directors. Upon the approval of the report, the department shall order the state district dissolved.

History: **En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 309, Ch. 418, L. 1995.**

Part 3

Organization, Administration, and Operation

Part Cross-References

Maintenance of fences, 76-16-320.

Animals unlawfully running at large, Title 81, ch. 4, part 2.

Herd districts, Title 81, ch. 4, part 3.

76-16-301. Powers and duties of directors. The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the department as provided in this chapter.

History: En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974; R.C.M. 1947, 46-2313.

Cross-References

One director to serve on County Planning Board, 76-1-211.

76-16-302. Membership in district. (1) Membership in the district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the district, except that the agent of a person entitled to membership in the district may become a member in place of his principal.

(2) If an agent becomes a member, his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. An agent and his principal may not both be members of the district unless the agent has individual qualifications for membership which are separable from and independent of those of his principal.

(3) All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-303. Voting rights. Permittee members only are entitled to vote on all issues submitted to a vote of the members. A permittee member has only one vote. Voting by proxy may not be permitted.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-304. Effect of transfer of land. When a member disposes of a part of the lands or leases owned by him so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved shall be determined by the directors of the state district with the approval of the department.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(2).

76-16-305. Acquisition and disposal of property. A state district may:

(1) purchase or market livestock and livestock products and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) acquire forage-producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease,

purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, or the county or counties in which the lands are located or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale, or otherwise;

(3) acquire or construct fences, reservoirs, or other facilities for the care of livestock and lease or purchase lands for such purposes.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(1), (3), (5).

76-16-306. Management of grazing lands. A state district may:

(1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.

(2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandoned farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;

(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(4), (8), (13); amd. Sec. 23, Ch. 266, L. 1979.

Cross-References

County weed control, Title 7, ch. 22, part 21.

Weed control — Department of Agriculture, Title 80, ch. 7, part 7.

Noxious weed management funding, Title 80, ch. 7, part 8.

76-16-307. Requirement to lease available state lands. State land situated that is within the boundaries of a grazing district created under this chapter and that is not otherwise disposed of by the department must be leased by the grazing district at a reasonable rental when offered for lease to the officers of the grazing district by the department. However, the officers of the grazing district may appear or submit evidence in writing before the department and show reason and cause for a change in the rental. If there is cause, the department may reappraise the land in question. The department shall require that all state districts comply with this section.

History: En. Sec. 16, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974; R.C.M. 1947, 46-2316; amd. Sec. 310, Ch. 418, L. 1995.

Cross-References

Lease of state grazing lands, 77-6-502, 77-6-504 through 77-6-508.

76-16-308. Regulation of stock grazing in district. A state district may:

(1) specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district;

(2) regulate the driving of stock over, across, into, or through the range and collect fees therefor;

(3) impose sanitary provisions, regulations, and practices.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(7), (12).

76-16-309. Knowledge of district boundaries responsibility of livestock owner. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the district.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part).

76-16-310. Permit required to run livestock in district. (1) No owner or person in control of livestock shall permit the same to run at large or under herd within the exterior boundaries of any state district unless the owner or person in control of such livestock shall first obtain a grazing permit for same from such state district.

(2) The owner or person in control of such livestock running at large or under herd within a state district without a permit from the district or in excess of such permit shall be liable for all damages sustained thereby by any member, permittee, or state district. If any such livestock wrongfully enters upon premises within such district, the owner or person in control of such trespassing livestock, who willfully or negligently permits same to run at large within the district without first obtaining a permit therefor from the district, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less than $10 or more than $500 and, in addition to said punishment, shall be liable for all damages sustained thereby to the party entitled thereto.

(3) This provision shall not require any person to obtain a grazing permit to graze livestock upon land owned or controlled by him within such state district if the stock so grazed is restrained from running at large within such state district and from grazing upon any other lands within the state district.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(1).

76-16-311. Control of trespassing livestock. (1) The state district or its duly authorized agent controlling the land upon which such wrongful entry is made by trespassing livestock may take into its possession such livestock and shall reasonably care for same while in its possession and may retain possession of said livestock and have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said livestock while in its possession.

(2) The state district taking up such livestock shall, within 72 hours after taking possession thereof, notify said owner, owners, or person in charge thereof by a notice in writing describing said livestock by number of animals and brands thereon, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the same thereafter, such charges not to exceed 50 cents per animal unit per day, and describing by general description the location of the premises upon which said livestock is held and requiring such owner or owners, within 10 days after receiving said notice, to take said livestock away after making full payment of all damages and costs of said livestock.

(3) In case the parties do not agree as to the amount of damages, the state district taking up such livestock may at the expense of the owner retain a sufficient amount of such livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a good and sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by said state district in a civil action to foreclose its lien, have returned to him all livestock held as aforesaid, and said state district shall be liable to such owner for any loss or injury to said livestock accruing through the state district's lack of reasonable care.

(4) If the state district taking up livestock shall fail to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the former shall bear the expense of keeping and feeding same while in its possession. Such notice may be given by personal service on the said owner, owners, or person in charge thereof, by leaving said notice at his usual place of residence with some member of his family over the age of 14 years, or by sending said notice by prepaid registered or certified mail, addressed to his last known place of residence. Said service by registered or certified mail shall be deemed complete upon the deposit of said notice in the post office.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(2), (3).

Cross-References

Application to trespass actions, 76-16-415.

76-16-312. Impoundment of trespassing livestock. The state district or the party taking up such trespassing livestock may cause same to be impounded at any suitable place within the state district or within 5 miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(9).

76-16-313. Release of livestock. Upon demand, the state district or its authorized agent controlling the land or party in charge of such livestock shall release and deliver possession of such livestock to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or persons in control of such livestock, as hereinbefore provided.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-314. Recovery of excess charge for damages. If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within 60 days after payment.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-315. Procedure upon inability to locate person responsible for trespassing livestock. The state district taking up such livestock (if, after due diligence to discover the owner or possessor of such livestock, such owner or possessor cannot be found or the ownership of such livestock discovered) or the party taking up such livestock (if said owner or claimant shall refuse to pay the amount of damages or charges or furnish bonds therefor, as herein provided) shall, within 10 days from the time that said livestock was taken up, deliver to the sheriff or a constable of the county in which the livestock was taken up a statement containing the information required to be given in the notice, hereinbefore set out, and in addition thereto, he shall mail, by prepaid registered or certified mail, a copy of said statement addressed to the nearest state livestock inspector.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-316. Sale of trespassing livestock. (1) Upon receipt of the statement referred to in 76-16-315, the sheriff or constable shall proceed to advertise and sell at public auction the livestock so taken up.

(2) Such livestock shall be sold on 5 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three public places in such county, one of which shall be within the district. Such sheriff may require from the state district a good and sufficient bond, conditioned that the state district has used reasonable diligence to discover the owner of such stock and to notify him in the premises and that all requirements of law on the part of the state district to be performed in the premises have been performed and indemnifying the sheriff against all liability for the sale of said livestock except as to his own failure to perform the things required of him by law.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-317. Disposition of sale proceeds. (1) The proceeds of the sale shall be applied by the sheriff, after first deducting his costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up such livestock, and the remainder, if any, may be paid over to the owner of such livestock, if known, and if the owner is not known, then such remainder shall be deposited with the county treasurer, who shall keep the same in a public fund to be designated state grazing district fund (giving the name of the district). A separate fund, styled as above, shall be kept by the county treasurer for each of said districts within his county. The county treasurer shall make a record of the number and type of animals sold and the brands on same, if any, the amount received for same, and the amount of deductions. The record shall be open to public inspection.

(2) Any person making claim of ownership of such livestock to the board of county commissioners at any time within 1 year from date of sale and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be entitled to receive such excess received from the sale of such livestock.

(3) Any money received from the sale of any such livestock which shall not be so claimed within 1 year after such sale shall be transferred to the general fund of the county at the expiration of said period.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(7).

76-16-318. Unlawful recovery of trespassing livestock. Any person taking or rescuing from the possession of a state grazing district or an agent thereof any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not exceeding $200.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(10).

76-16-319. No liability for official acts. An officer, the department, an employee of an officer or the department, or an employee of any county or of any state district is not liable for any act performed in good faith in discharging official duties under this chapter. All acts are presumed to have been in good faith and in conformity with this chapter.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(8); amd. Sec. 311, Ch. 418, L. 1995.

76-16-320. Maintenance of fences. (1) Regarding fences within the external boundaries of state districts, the cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of such state district shall be borne by such member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of such state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by such cost of construction and maintenance of fence, the state district's proportionate share of such costs and maintenance shall be financed only by assessments levied by the state district against the permittee members of the district upon consent thereto by 55% of such permittee members.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(11), (12).

76-16-321. Construction of trespass and fence provisions. (1) Sections 76-16-310 through 76-16-320 shall not be interpreted to repeal or abolish any other legal remedies which a member, a permittee, or a state district may now have against trespassing livestock or the owner or persons in control thereof. The remedies provided by 76-16-310 through 76-16-320 are additional and supplemental to the remedies provided by any other laws of the state of Montana.

(2) Nothing contained in 76-16-310 through 76-16-320 shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

History: (1)En. Sec. 8, Ch. 199, L. 1945; Sec. 46-2327, R.C.M. 1947; (2)En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; Sec. 46-2326, R.C.M. 1947; R.C.M. 1947, 46-2326(13), 46-2327.

76-16-322. Fence-out requirement. Farming lands lying within the external boundaries of a state district shall be protected by the owner or lessee to the extent of a legal fence as described in 81-4-101(1). The state district or its members shall not be liable for damages unless such farming lands are protected by a sufficient fence as described in this section.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).

76-16-323. District finances. A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on an animal unit basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the department. This subsection does not confer power upon a state district to mortgage the property of the individual members of the district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(6), (9), (10).

76-16-324. Lawsuits involving district. A state district may sue or be sued in its corporate name.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(2).

76-16-325. Compliance with department orders required. (1) If a state district or the directors of a state district fail to comply with an order of the department, the department may order a hearing on the order within the district or county and cite the directors of the district to appear before the department.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as provided in this part and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the department, the directors may be summarily removed from office by the department, and the district shall elect new officers. During the period until the election, the department may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district must be paid by the noncomplying state district before it may be reinstated.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part); amd. Sec. 312, Ch. 418, L. 1995.

Part 4

Grazing Permit System

76-16-401. Distribution of grazing preferences. When a state district is organized, grazing preferences shall be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property as heretofore defined may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range for any 3 years or any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, preferring those that have used the range 5 years immediately preceding the organization of such districts.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-402. Conversion of temporary permittee lands to dependent commensurate property. (1) When such temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by such permittee within or near the district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by such permittee may be considered dependent commensurate property and, upon application, the district may accordingly grant such permittee membership and preference in the district providing an application had been made for temporary rights for each of the 5 years.

(2) However, such temporary permits shall at all times be merely privileges granted from year to year, and their possession shall in no event establish a preference right unless such preference right be expressly granted by the district and in the manner herein provided.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-403. Procedure if reduction in grazing privileges necessary. If reductions in grazing privileges become necessary, operators with temporary permits will be reduced first on a proportionate basis. When the extent of reduction of privileges exceeds that of temporary permits, then the rights of operators with both dependent commensurate property and commensurate property shall be reduced together on a proportionate basis.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-404. Application for grazing preferences. Any person entitled to grazing preferences within any state grazing district based on dependent commensurate property or commensurate property must make application within 1 year after said district shall have been organized to qualify for said preference; provided, however, all permittees shall be entitled to benefits accruing under 76-16-401 through 76-16-403.

History: En. Sec. 21, Ch. 208, L. 1939; amd. Sec. 6, Ch. 199, L. 1945; R.C.M. 1947, 46-2321(part).

76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property. Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based except as provided in this chapter. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process or transaction, except as provided in this section, 76-16-406 through 76-16-409, 76-16-412, and 76-16-413 or in the bylaws of a state district.

History: Ap. p. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; Sec. 46-2322, R.C.M. 1947; Ap. p. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945, amd. Sec. 37, Ch. 253, L. 1974; Sec. 46-2302, R.C.M. 1947; R.C.M. 1947, 46-2302(part), 46-2322(part).

76-16-406. Transfer of preferences. (1) Upon application by a permittee, the state district with the approval of the department may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the department.

(3) All expenses involved under the application shall be borne by the applicant.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 24, Ch. 266, L. 1979.

76-16-407. Processing of application for transfer. (1) When an application for transfer is presented to the board of directors of a state district, the secretary upon the direction of that board shall give notice thereof, setting forth in general the application and the time and place of a hearing thereon as fixed by the board. A copy of the notice shall be given or mailed to the applicant and shall be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the district, and the notice shall also be posted for at least 2 full weeks prior to the hearing in three public places within the district.

(2) The date of hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections thereto.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(2).

76-16-408. Effect of transfer of preference. Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the preference transferred.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(3).

76-16-409. Transfer of underlying property. (1) When the land to which a preference is attached changes its control or ownership, the preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the preferences may be revoked by the state district.

History: **En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).**

76-16-410. Compensation to district for range improvements. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value shall be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it shall be fixed by the department.

History: **En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974; R.C.M. 1947, 46-2323.**

76-16-411. Grazing permits to owners of land not controlled by district. (1) When any land is situated within the boundaries of a state district and is not leased or controlled by said district and not surrounded by a legal fence, any person owning or controlling such lands shall have the right to obtain a grazing permit from the state district, the size of which shall be determined by the carrying capacity of such land, full consideration being given for location of necessary stock water. The use of such permit shall be subject to all regulations by the state district.

(2) If the person owning or controlling such land declines to secure such permit or fails to lease such land to the state district at a fair lease rental and fails to fence such land at his own expense, he shall not be entitled to recover damages for trespass by stock grazing under permit, but the state district shall not issue a permit to use the carrying capacity of such land.

History: **En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).**

76-16-412. Revocation of preferences upon failure to obtain permits, pay fees, or obey rules. (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by registered or certified mail that the preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by registered or certified mail that the preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the permittee or owner fails to pay the charges or comply.

History: **En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).**

76-16-413. Effect of revocation. (1) When a preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(7).

76-16-414. Equalization of district assets. (1) Whenever a state district shall possess reserves, the values of which are greater than its liabilities, and the state district shall determine that a part of such reserves is in excess of its reasonable needs to operate the district, such state district may refund to the permittee members their proportionate share of such reserves as determined at the last annual accounting.

(2) Whenever a state district shall possess reserves and physical assets, the values of which are greater than its liabilities, and a permittee member shall lose his grazing preference, he shall be entitled to receive his proportionate share of the value of such excess from the state district, as determined by the annual accounting of the state district. The state district may set off the amount of any claim it may have against such former member.

(3) Whenever a new member shall receive a grazing preference, he shall, as a condition of receiving such preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund which accrues to him by virtue of such membership. Such value shall be determined at the time of receiving such preference and upon the basis of the determination of value of such physical assets and reserves made at the last annual accounting.

History: En. Sec. 24, Ch. 208, L. 1939; amd. Sec. 5, Ch. 163, L. 1953; R.C.M. 1947, 46-2324.

76-16-415. Application to trespass actions. Sections 76-16-405 through 76-16-409, 76-16-412, and 76-16-413 do not apply to trespass violations.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

Cross-References

Control of trespassing livestock, 76-16-311.

CHAPTERS 17 THROUGH 20

RESERVED

CHAPTER 21

YOUTH CONSERVATION CORPS
(Terminated. Sec. 14, Ch. 652, L. 1983)

Chapter Compiler's Comments

Histories of Terminated Sections:

76-21-101.	En. Sec. 1, Ch. 652, L. 1983.
76-21-102.	En. Sec. 2, Ch. 652, L. 1983.
76-21-103.	En. Sec. 3, Ch. 652, L. 1983.
76-21-201.	En. Sec. 4, Ch. 652, L. 1983.
76-21-202 through 76-21-204	reserved.
76-21-205.	En. Sec. 7, Ch. 652, L. 1983.
76-21-206.	En. Sec. 8, Ch. 652, L. 1983.
76-21-207.	En. Sec. 9, Ch. 652, L. 1983.
76-21-301.	En. Sec. 10, Ch. 652, L. 1983.
76-21-302.	En. Sec. 5, Ch. 652, L. 1983.
76-21-303.	En. Sec. 6, Ch. 652, L. 1983.

TITLE 77

STATE LANDS

Ch.
1. Administration of State Lands.
2. Transfers and Reservations of Property Interests.
3. Rock, Mineral, Coal, Oil, and Gas Resources.
4. Geothermal and Hydroelectric Resources.
5. Timber Resources.
6. Agricultural, Grazing, and Other Surface Leases.

CHAPTER 1

ADMINISTRATION OF STATE LANDS

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Part 1

General Provisions

Part Cross-References

State lands — public school fund, Art. X, sec. 2, Mont. Const.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Income from state lands — public school fund, Art. X, sec. 5, Mont. Const.

State university funds from state lands, Art. X, sec. 10, Mont. Const.

Public land trust — disposition, Art. X, sec. 11, Mont. Const.

Income from land not held in trust — credit to general fund, 77-3-436.

77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(5) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

(6) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or

(iv) lands acquired through investments under the provisions of 17-6-201.

History: En. Sec. 2, Ch. 60, L. 1927; re-en. Sec. 1805.2, R.C.M. 1935; amd. Sec. 7, Ch. 184, L. 1961; amd. Sec. 2, Ch. 428, L. 1973; amd. Sec. 2, Ch. 203, L. 1977; R.C.M. 1947, 81-102; amd. Sec. 10, Ch. 467, L. 1987; amd. Sec. 2, Ch. 609, L. 1991; amd. Sec. 3, Ch. 370, L. 1995; amd. Sec. 313, Ch. 418, L. 1995; amd. Sec. 2, Ch. 32, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 32 in definition of state land, in (b)(iv) after "through", deleted "foreclosure of any", after "investments" deleted "purchased", and at end substituted "17-6-201" for "17-6-211"; and made minor changes in style.

Cross-References

Lands granted to state by United States, The Enabling Act (see anno. vol. 1, Federal Materials): sec. 4 (title to; jurisdiction over); sec. 10 (school support); sec. 11 (sale and lease of); sec. 12 (in aid of public buildings); sec. 14 (selection of; for universities); sec. 15 (for Deer Lodge prison); sec. 16 (agricultural college); sec. 17 (in aid of public buildings); and sec. 19 (manner of selection).

Capitol building lands, 18-2-107.

Property of state — what included, 70-1-202.

Acceptance of federal land by Board of Land Commissioners, 77-1-211.

77-1-102. Ownership of certain islands and abandoned riverbeds. All lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of such stream or lake as the same are shown by the United States survey thereof and all islands existing in the navigable streams or lakes in this state which have not been surveyed by the government of the United States and all lands which at any time in the past comprised such an island or any part thereof, except such lands as are occupied by and belong to the adjacent landowners as accretions, belong to the state of Montana to be held in trust for the benefit of the public schools of the state.

History: En. Sec. 1, Ch. 36, L. 1937; R.C.M. 1947, 81-2301.

Cross-References

Ownership of land bounded by water, 70-16-201.

Islands and accretion, Title 70, ch. 18, part 2.

Navigable waters, 85-1-112.

77-1-103. Administration of lands. The board shall lease or sell lands under 77-1-102 in the same manner as other school lands of the state are leased and sold. The board may sell or lease these lands without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104. The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

History: En. Sec. 2, Ch. 36, L. 1937; amd. Sec. 104, Ch. 428, L. 1973; R.C.M. 1947, 81-2302.

Cross-References

Disposition of proceeds from sale, 77-2-337.

Disposition of proceeds from lease, 77-3-106 (mining leases); 77-3-206 (non-metallic minerals); 77-3-318 (coal); 77-3-436 (oil); 77-4-127 (geothermal).

77-1-104. Survey of lands. If the board considers it necessary that any of the lands mentioned in 77-1-102 be surveyed, it shall have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys. The county surveyor or other surveyor appointed shall make an actual survey thereof establishing four corners of every quarter section and connecting the same with a United States survey and within 30 days after such survey file with the county clerk and recorder of that county a copy under oath of his field notes and plat and a duly certified copy of his field notes and plat with the department. For the services required in connection with the survey, the county surveyor or other surveyor appointed is entitled to fees as prescribed in 7-4-2821. Such fees shall be paid in the same manner as other expenses of the department.

History: En. Sec. 3, Ch. 36, L. 1937; amd. Sec. 105, Ch. 428, L. 1973; R.C.M. 1947, 81-2303.

Cross-References

County Surveyor, Title 7, ch. 4, part 28.

Engineers and land surveyors, Title 37, ch. 67.

77-1-105. Determining title. The board may take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state and to that end may bring or defend suits or other proceedings in court or before other proper tribunals.

History: En. Sec. 14, Ch. 148, L. 1937; Sec. 81-614, R.C.M. 1947; redes. 81-2305 and amd. by Sec. 46, Ch. 428, L. 1973; R.C.M. 1947, 81-2305.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Suits affecting title — Governor may require Attorney General to appear, 2-15-201.

Limitations on actions concerning real property — state, Title 70, ch. 19, part 3.

Quieting title to real property, Title 70, ch. 28.

77-1-106. Setting of rates or fees — rules. (1) In setting the lease rental rates or fees for the use of state lands and cabin sites, the board shall consider the impact of the uses on the school trust asset, lessee expenses for management, water development, weed control, fire control, the term of the lease, the production capabilities, the conditions on the lease payment, and any other required expenses reasonably borne by the lessee. In setting cabin site lease rates, the board shall consider expenses that are commonly incurred by the lessees to preserve the value of the state land or to provide services commonly provided by private lessors in the area.

(2) All lease rental rates and fees established by the board under 77-1-208, 77-1-802, 77-6-202, 77-6-501, 77-6-502, and 77-6-507 must consider the trust asset and be in the best interests of the state with regard to the long-term productivity of the school trust lands, while optimizing the return to the school trust.

(3) The board shall comply with Title 2, chapter 4, part 3, in setting rental rates and license fees pursuant to 77-1-208, 77-1-802, 77-6-202, 77-6-501, 77-6-502, and 77-6-507.

History: **(1), (2)En. Sec. 13, Ch. 586, L. 1993; (3)En. Sec. 10, Ch. 586, L. 1993.**

77-1-107 through 77-1-109 reserved.

77-1-110. Written undertaking required in legal action for challenge to use or disposition of state lands. In any civil action seeking an injunction or restraining order concerning a decision of the board approving a use or disposition of state lands that would produce revenue for any state lands trust beneficiary, the court shall require a written undertaking for the payment of damages that may be incurred by the trust beneficiary if the board is wrongfully enjoined or restrained.

History: **En. Sec. 1, Ch. 273, L. 1995.**

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Injunctions, Title 27, ch. 19.

77-1-111. Court actions. (1) All actions for the recovery of money due under this title or for the cancellation of leases or for the cancellation of certificates of purchase or patents or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands shall be controlled, as to venue, by the provisions of the rules of civil procedure relating to the place of trial of civil actions and shall be conducted by the attorney general.

(2) When so requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands, and in all other state land matters that may arise in his county. The county attorney shall not be entitled to charge the state any compensation for such services beyond his regular salary.

History: **(1)En. Sec. 100, Ch. 147, L. 1909; re-en. Sec. 1921, R.C.M. 1921; re-en. Sec. 1921, R.C.M. 1935; Sec. 79-1503, R.C.M. 1947; (2)En. Sec. 112, Ch. 60, L. 1927; re-en. Sec. 1805.112, R.C.M. 1935; Sec. 81-1015, R.C.M. 1947; R.C.M. 1947, 79-1503, 81-1015.**

Cross-References

Suits affecting title — Governor may require Attorney General to appear, 2-15-201.

Duties of Attorney General, 2-15-501.

Duties of County Attorney to state, 7-4-2716, 7-4-2717.

Venue — real property actions, 25-2-123.

Action for recovery of real property, 70-19-102.

Provisions relating to state in real property actions, Title 70, ch. 19, part 3.

Forcible entry and detainer, Title 70, ch. 27.

Procedure for default in land purchases from state, 77-2-332.

State land patents — generally, 77-2-341 through 77-2-345.

77-1-112. Violations classified. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this title or for modifying the performance thereof is guilty of a felony and punishable as provided in 77-1-115.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or of any land offered the state for sale or offered as security for a loan from the state

or who falsely classifies or scales any timber on state lands or from state lands or any timber in which the state is interested or who knowingly and willfully makes any false report of any such classification or appraisal or scaling is guilty of a felony and punishable as provided in 77-1-115.

(3) (a) Any officer, employee, or representative of the state who otherwise violates any of the provisions of this title:

(i) is guilty of a felony if the violation results in a loss to the state of $1,000 or more; or

(ii) is guilty of a misdemeanor if the violation results in a loss to the state of less than $1,000 or in no pecuniary loss.

(b) The punishment shall be as provided in 77-1-115.

History: (1), (2)En. Sec. 118, Ch. 60, L. 1927; re-en. Sec. 1805.118, R.C.M. 1935; Sec. 81-1111, R.C.M. 1947; (3)En. Sec. 106, Ch. 147, L. 1909; re-en. Sec. 1927, R.C.M. 1921; re-en. Sec. 1927, R.C.M. 1935; Sec. 79-1504, R.C.M. 1947; R.C.M. 1947, 79-1504, 81-1111; amd. Sec. 1, Ch. 15, L. 1979.

Cross-References

Public employee standards of conduct, Title 2, ch. 2.

Bribery, 45-7-101.

Official misconduct, 45-7-401.

77-1-113. Restrictions on who may buy or lease state lands. It is unlawful for any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber on state lands, or any officer or employee of the department to purchase or lease, directly or indirectly, any state lands or any timber on state lands.

History: En. Sec. 117, Ch. 60, L. 1927; re-en. Sec. 1805.117, R.C.M. 1935; amd. Sec. 75, Ch. 428, L. 1973; R.C.M. 1947, 81-1110; amd. Sec. 2, Ch. 15, L. 1979; amd. Sec. 314, Ch. 418, L. 1995.

Cross-References

Public officers not to have interest in contracts, 2-2-201.

77-1-114. Prosecutions. (1) Whenever an arrest shall be made for any violation of the provisions of this title or whenever any information of such violations shall be lodged with him, the county attorney of the county in which this act was committed must prosecute the offender or offenders if in his judgment the facts warrant the same.

(2) If any county attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 or more than $1,000. Upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant and notify the proper appointing power thereof. Actions against the county attorney shall be brought by the attorney general in the name of the state.

(3) The penalties of this section shall also apply to any magistrate with proper authority who refuses or neglects to cause the arrest and prosecution of any person when a complaint under oath of a violation of any of the provisions of this title has been lodged with him.

History: En. Sec. 17, Ch. 147, L. 1909; re-en. Sec. 1839, R.C.M. 1921; re-en. Sec. 1839, R.C.M. 1935; R.C.M. 1947, 81-1416; amd. Sec. 3, Ch. 15, L. 1979.

Cross-References

Forfeiture of office — criminal conviction, 2-16-501, 45-7-401.

Vacancies in office, 7-4-2206.

Duties of County Attorney to state, 7-4-2716.

Official misconduct, 45-7-401.

77-1-115. Punishments. (1) Any officer, employee, or representative of the state who is found guilty of a felony as defined in 77-1-112 is punishable by imprisonment in the state penitentiary for not less than 1 or more than 10 years or by a fine which shall neither be less than $500 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine.

(2) Any officer, employee, or representative of the state who is found guilty of a misdemeanor as defined in 77-1-112 is punishable by imprisonment in a county jail not to exceed 1 year or by a fine which shall neither be less than $100 nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted or by both such imprisonment and fine.

History: En. Sec. 119, Ch. 60, L. 1927; re-en. Sec. 1805.119, R.C.M. 1935; R.C.M. 1947, 81-1112; amd. Sec. 4, Ch. 15, L. 1979.

Cross-References

Forfeiture of office — criminal conviction, 2-16-501, 45-7-401.

77-1-116. Additional penalty. In addition to the penalties provided for in this code against those committing trespass upon any of the lands owned or held in trust or otherwise by the state, the board is hereby authorized and empowered, without legal process, to seize and take or cause to be seized and taken any and all lumber, wood, grass, or other property unlawfully severed from the lands, whether the same has been removed from said lands or not, and may dispose of the same at either public or private sale in such manner as will be most conducive to the interests of the state, and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent fund to which such lands may belong.

History: En. Sec. 7, p. 49, L. 1893; re-en. Sec. 3566, Pol. C. 1895; re-en. Sec. 2219, Rev. C. 1907; amd. Sec. 59, Ch. 147, L. 1909; re-en. Sec. 1879, R.C.M. 1921; re-en. Sec. 1879, R.C.M. 1935; R.C.M. 1947, 81-1602.

Cross-References

Criminal trespass to land, 45-6-203.

Trespass for taking timber, 70-16-107, 70-16-108.

77-1-117. Disposition of fines. Unless otherwise provided, all money received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state, except money received by a justice's court, shall be paid to the state treasurer and by him deposited to the credit of the general fund.

History: En. Sec. 104, Ch. 147, L. 1909; amd. Sec. 1, Ch. 99, L. 1917; amd. Sec. 1, Ch. 171, L. 1919; amd. Sec. 1, Ch. 103, L. 1921; re-en. Sec. 1919, R.C.M. 1921; re-en. Sec. 1919, R.C.M. 1935; R.C.M. 1947, 79-1502; amd. Sec. 5, Ch. 15, L. 1979; amd. Sec. 49, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

General fund, 17-2-102.

77-1-118 and 77-1-119 reserved.

77-1-120. Terminated. Sec. 17, Ch. 586, L. 1993.

History: En. Sec. 14, Ch. 586, L. 1993.

77-1-121 through 77-1-124 reserved.

77-1-125. Liability for unauthorized installation or construction of facility or structure on state trust land — penalty. (1) A person, other than the lessee of the affected state trust land, may not, after September 30, 1997:

(a) install or construct a road, pipeline, ditch, utility line, fence, building, or other facility or structure on state trust land without obtaining an easement, lease, license, or other written permission of the department; or

(b) disturb state trust land in anticipation of the installation or construction of the facility or structure.

(2) A person who violates subsection (1) is liable to the department for a civil penalty in an amount determined by the board. The penalty may be an amount up to three times the full market value of the land disturbed or affected or $500, whichever is greater.

(3) In addition to the penalty provided for in subsection (1), a person who installs or constructs a facility or structure on state trust land without permission is liable for any permanent damage to the state trust land and may be required to remove the facility or structure and to reclaim the disturbed land to the satisfaction of the department or to pay the department's cost of removal and reclamation.

(4) If the department allows the facility or structure to remain on state trust land, the department shall also require payment of full market value of any easement, lease, or license required for the facility or structure.

(5) The penalties provided in this section do not apply to the lessee of the affected state trust land. The remedies and penalties provided in a state trust easement, lease, or license and the statutes and regulations under which the easement, lease, or license was entered are the exclusive remedies and penalties that may be applied to a lessee.

(6) The penalties provided in this section do not apply to persons who have inadvertently installed or constructed pipelines or utility lines within 20 feet of the easement boundaries granted by the state.

(7) The penalties provided in this section do not apply to facilities or structures installed on lands acquired by the state through exchange or purchase that were authorized with the permission of the previous landowner or through authority granted by an appropriate government agency.

History: En. Sec. 1, Ch. 460, L. 1997.

Compiler's Comments

Effective Date: Section 3, Ch. 460, L. 1997, provided: "[This act] is effective July 1, 1997."

77-1-126 through 77-1-129 reserved.

77-1-130. *(Temporary)* **Recognition of historic right-of-way — criteria for right-of-way deed — conditions — fees.** (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant's private property or to provide continuation of a county road by filing an application with the department by October 1, 2001, on a form prescribed by the department. An application must be accompanied by:

(a) an application fee of $50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way applied for before 1973 and that the use has continued to the present;

(ii) describing the purpose for which the right-of-way was used before 1973; and

(iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and

(c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or

(ii) other evidence of the use of the right-of-way applied for.

(2) The department shall review an application and other evidence submitted pursuant to subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

(a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of the historic right-of-way as provided in subsection (4);

(b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);

(c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

(d) the deed is approved by the board.

(3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant's successor in interest with the approval of the department. The department may not require a fee for the approval of an assignment and may not withhold approval for any reason other than that the use of the historic right-of-way is contrary to subsection (5).

(4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the acreage of the historic right-of-way based on the following classifications of land:

(i) $37.50 per acre for state land classified as grazing land;

(ii) $275 per acre for state land classified as timber land;

(iii) $100 per acre for state land classified as crop land; and

(iv) $100 per acre for other land.

(b) Amounts collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund established for receipt of income from the land over which a historic right-of-way is granted.

(5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

(a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of Title 75, chapter 1, parts 1 and 2, and Title 22, chapter 3, part 4.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter. However, the department may not require reversion of the right-of-way to the state.

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land. *(Terminates October 1, 2003—sec. 5, Ch. 461, L. 1997.)*

History: En. Sec. 1, Ch. 461, L. 1997.

Compiler's Comments

Termination: Section 5, Ch. 461, L. 1997, provided: "[This act] terminates October 1, 2003."

77-1-131. *(Temporary)* **State lands historic right-of-way account — statutory appropriation.** There is a state lands historic right-of-way account in the state special revenue fund. The application fee collected by the department pursuant to 77-1-130(1)(a) must be deposited in the account. Money in the account is statutorily appropriated to the department, as provided in 17-7-502, for the expenses of the department in administering 77-1-130. Money in the account on the termination date of the account must be deposited in the general fund. *(Terminates October 1, 2003—sec. 5, Ch. 461, L. 1997.)*

History: En. Sec. 2, Ch. 461, L. 1997.

Compiler's Comments

Termination: Section 5, Ch. 461, L. 1997, provided: "[This act] terminates October 1, 2003."

Part 2

Board of Land Commissioners

77-1-201. Board — meetings and officers. (1) The board shall hold regular meetings at least once each month and may hold special meetings whenever considered necessary upon call of the president or a majority of the members.

(2) Three members of the board constitute a quorum for the transaction of business. The governor is the president of the board; in his absence the lieutenant governor shall preside and in his absence the superintendent of public instruction shall preside.

History: En. Sec. 4, Ch. 60, L. 1927; re-en. Sec. 1805.4, R.C.M. 1935; amd. Sec. 4, Ch. 428, L. 1973; R.C.M. 1947, 81-104.

Cross-References

Constitutional establishment and membership of Board, Art. X, sec. 4, Mont. Const.

Governor as member of Board, 2-15-201.

Secretary of State as member of Board, 2-15-401.

Attorney General as member of Board, 2-15-501.

77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state as provided in The Enabling Act. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) It is consistent with the powers and duties provided in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation.

(3) When acquiring land for the state, the board shall determine the value of the land after an appraisal by a qualified land appraiser.

History: En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; R.C.M. 1947, 81-103(part); amd. Sec. 1, Ch. 136, L. 1983; amd. Sec. 3, Ch. 609, L. 1991; amd. Sec. 1, Ch. 222, L. 1995.

Cross-References

Support of education, Art. X, sec. 2, 4, 5, and 11, Mont. Const.

Disposition of public land trust, Art. X, sec. 11, Mont. Const.

Investment authority of Board of Investments, Title 17, ch. 6, part 2.

Interest and income money to schools — deposit by Board, 20-9-341.

Interest and income money part of state equalization aid to schools, 20-9-343.

Board to prescribe rules for appraisal, 77-1-206.

Classification of state lands, 77-1-402.

Exchange or sale of state lands within Indian reservations, 77-2-201.

Limitation on overriding royalties and payments out of production allowed — state oil and gas leases, 77-3-444.

77-1-203. Multiple-use management. (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

(3) State lands, including those lands that are leased primarily for other purposes, are open to general recreational use subject to legal access and to closures and restrictions pursuant to rules adopted under 77-1-804.

(4) The department shall include in all new or renewal leases and licenses a provision that leased lands may not be closed at any time to the public for general recreational purposes without advance written permission of the department.

History: (1)En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; Sec. 81-103, R.C.M. 1947; (2)En. Sec. 16, Ch. 60, L. 1927; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; Sec. 81-302, R.C.M. 1947; R.C.M. 1947, 81-103(part), 81-302(part); amd. Sec. 6, Ch. 15, L. 1979; amd. Sec. 4, Ch. 609, L. 1991.

Cross-References

Classification of state lands, 77-1-402.

77-1-204. Power to sell, lease, or exchange certain state lands. (1) The board is authorized to lease state lands for uses other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203. The lease period for such leases, except for power and school site leases, may not be for longer than 40 years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into.

History: (1)En. 81-103.1 by Sec. 1, Ch. 135, L. 1974; Sec. 81-103.1, R.C.M. 1947; (2)En. Sec. 5, Ch. 159, L. 1937; Sec. 81-1107, R.C.M. 1947; R.C.M. 1947, 81-103.1, 81-1107; amd. Sec. 1, Ch. 488, L. 1985; amd. Sec. 5, Ch. 609, L. 1991.

Cross-References

Authority to lease and exchange state lands, Art. X, sec. 4, Mont. Const.

77-1-205. Board to correct errors. The board shall correct errors, mistakes, and misdescriptions in deeds and conveyances of property to the state. Deeds or other conveyances shall be made and executed in the manner provided for the execution of patents by the state. The board may also correct errors in leases, certificates of purchase, patents, and other conveyances of property from the state upon satisfactory proof that an error or mistake has been made.

History: En. Sec. 115, Ch. 60, L. 1927; re-en. Sec. 1805.115, R.C.M. 1935; Sec. 81-1108, R.C.M. 1947; redes. 81-106 and amd. by Sec. 73, Ch. 428, L. 1973; R.C.M. 1947, 81-106.

Cross-References

Refunding of money paid by mistake, 77-1-303.

Execution of patents by state, 77-2-342.

77-1-206. Board to prescribe further rules for appraisal. The board shall prescribe such further rules for the appraisal of state lands as it may deem necessary, not inconsistent with the provisions of this title or the state constitution.

History: En. Sec. 18, Ch. 60, L. 1927; re-en. Sec. 1805.18, R.C.M. 1935; R.C.M. 1947, 81-303.

Cross-References

Adoption of rules governed by Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-207. Board to defend suits. For the purpose of determining the title to any property seized and taken under the provisions of 77-1-116, the board is hereby authorized and empowered to defend, in the name of the state, any and all actions that may be brought for that purpose and to do and perform all things necessary to protect the interests of the state.

History: En. Sec. 8, p. 49, L. 1893; re-en. Sec. 3567, Pol. C. 1895; re-en. Sec. 2220, Rev. C. 1907; re-en. Sec. 60, Ch. 147, L. 1909; re-en. Sec. 1880, R.C.M. 1921; re-en. Sec. 1880, R.C.M. 1935; R.C.M. 1947, 81-1603.

Cross-References

Actions affecting title to state property — Governor may require Attorney General to appear, 2-15-201.

77-1-208. Cabin site licenses and leases — method of establishing value. (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 2.

(2) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(3) The board shall follow the procedures set forth in 77-6-302 through 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.

History: En. Sec. 1, Ch. 459, L. 1983; amd. Sec. 1, Ch. 705, L. 1989; amd. Sec. 1, Ch. 586, L. 1993; amd. Sec. 9, Ch. 463, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 463 in (1), at end of fourth sentence, inserted "without any adjustments as a result of phasing in values". Amendment effective April 30, 1997.

Effective Date — Retroactive Applicability: Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514, 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412, 15-36-323, and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

77-1-209. Leasing rules. The board may prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state of Montana. The rules should prescribe a procedure for setting all fees and rental rates for the use of state lands for any purpose. The procedure should establish provisions for notice, public comment, public hearings, and appeal.

History: En. Sec. 37, Ch. 60, L. 1927; re-en. Sec. 1805.37, R.C.M. 1935; amd. Sec. 24, Ch. 428, L. 1973; R.C.M. 1947, 81-423; MCA 1981, 77-6-104; redes. 77-1-209 by Code Commissioner, 1983; amd. Sec. 11, Ch. 586, L. 1993.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-210 reserved.

77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

(3) Notwithstanding any provisions of this title, the board, after consultation with the director of the department of environmental quality, may accept any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq. Legislative approval is not required for acceptance.

History: En. Sec. 113, Ch. 60, L. 1927; re-en. Sec. 1805.113, R.C.M. 1935; amd. Sec. 70, Ch. 428, L. 1973; R.C.M. 1947, 81-1101(part); amd. Sec. 1, Ch. 452, L. 1979; amd. Sec. 2, Ch. 274, L. 1989; amd. Sec. 315, Ch. 418, L. 1995.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-212. Acceptance of federal facilities and installations — title in state. The board may, on behalf of the state, accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede Title 18, chapter 5, part 2.

History: En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973; R.C.M. 1947, 81-1101.1.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state. (1) The board is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies, and devises having a value of not less than $250 from each person. All lands passing to the state under these provisions or through the operation of law shall be managed as other state lands, and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations.

(2) All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money or the equivalent of money shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated by this title. The provisions of this section shall apply to gifts, donations, grants, legacies, and devises already made to the state and now

under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

History: En. Sec. 114, Ch. 60, L. 1927; re-en. Sec. 1805.114, R.C.M. 1935; amd. Sec. 43, Ch. 100, L. 1973; R.C.M. 1947, 81-1102.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

Escheated real property, 72-14-206.

77-1-214. Donations of land for forestry purposes. The board may accept gifts, donations, or contributions of land suitable for forestry or park purposes and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests.

History: En. Sec. 1, Ch. 159, L. 1937; amd. Sec. 72, Ch. 428, L. 1973; R.C.M. 1947, 81-1103.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-215. Expenditures authorized. When lands are acquired or leased under 77-1-214, the board is hereby authorized to:

(1) make expenditures from any funds not otherwise obligated for the management, development, and utilization of such areas;

(2) sell or otherwise dispose of products from such lands; and

(3) make such rules as may be necessary to carry out the purposes of 77-1-214 through 77-1-217 and 77-1-204(2).

History: En. Sec. 2, Ch. 159, L. 1937; R.C.M. 1947, 81-1104.

Cross-References

Adoption of rules governed by Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-216. Disposition of revenues and profits. All revenues derived from lands acquired under the provisions of 77-1-214 shall be segregated by the state treasurer for the use of the board in the acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, 50% of all net profits accruing from the administration of such lands shall be applicable for such purposes as the legislature may prescribe and 50% shall be paid into the school fund of the county in which lands are located.

History: En. Sec. 3, Ch. 159, L. 1937; R.C.M. 1947, 81-1105.

Cross-References

School funds from state lands, Art. X, sec. 2 through 5, and 11, Mont. Const.

County schools equalization revenue, 20-9-331.

Interest and income money, 20-9-341 through 20-9-343.

77-1-217. Payment of certain obligations. Obligations for the acquisition of land incurred by the board under the authority of 77-1-214 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the state.

History: En. Sec. 4, Ch. 159, L. 1937; R.C.M. 1947, 81-1106.

77-1-218 through 77-1-220 reserved.

77-1-221. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 1, Ch. 691, L. 1989.

77-1-222. Repealed. Sec. 74, Ch. 18, L. 1995.

History: En. Sec. 2, Ch. 691, L. 1989.

Part 3

Department of Natural Resources and Conservation

Part Cross-References

Cooperative agreements with district weed boards, 7-22-2151.

77-1-301. Powers and duties of the department. (1) Under the direction of the board, the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the department demands, or the statutes require.

(2) It shall collect and receive all moneys payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. It shall issue a receipt for each cash payment or whenever requested by the payer.

History: En. Sec. 8, Ch. 60, L. 1927; re-en. Sec. 1805.8, R.C.M. 1935; amd. Sec. 2, Ch. 26, L. 1971; Sec. 81-204, R.C.M. 1947; redes. 81-105 and amd. by Sec. 5, Ch. 428, L. 1973; R.C.M. 1947, 81-105.

Cross-References

Duty to identify, protect, and develop heritage properties and paleontological remains on state lands, 22-3-424.

Department to administer abandoned railroad right-of-way until needed for transportation, 60-11-111.

Transportation of coniferous trees — Department authority, 76-13-601.

77-1-302. Setting fees. The department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.

History: En. Sec. 120, Ch. 60, L. 1927; re-en. Sec. 1805.120, R.C.M. 1935; amd. Sec. 19, Ch. 121, L. 1965; amd. Sec. 11, Ch. 22, L. 1971; Sec. 81-1113, R.C.M. 1947; redes. 81-108 and amd. by Sec. 76, Ch. 428, L. 1973; R.C.M. 1947, 81-108.

77-1-303. Refunding of money paid by mistake. If any money is erroneously paid to the state on any permit, lease, certificate of purchase, patent, loan, or in any other transaction, the department shall refund that money to the person entitled to it from the proper fund.

History: En. Sec. 116, Ch. 60, L. 1927; re-en. Sec. 1805.116, R.C.M. 1935; Sec. 81-1109, R.C.M. 1947; redes. 81-107 and amd. by Sec. 74, Ch. 428, L. 1973; R.C.M. 1947, 81-107.

77-1-304. Selection and location of lands granted by United States. Under the general direction of the board and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands granted to this state by the United States for any purpose and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections 16 and 36 and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; re-en. Sec. 1805.15, R.C.M. 1935; amd. Sec. 7, Ch. 428, L. 1973; R.C.M. 1947, 81-301; amd. Sec. 1, Ch. 286, L. 1985.

Cross-References

Appropriations, permits, and certificates of water rights, Title 85, ch. 2, part 3.

Part 4

Classification of State Lands

77-1-401. Classes of land. The state lands are classified as follows:

(1) Class 1—lands which are principally valuable for grazing purposes;

(2) Class 2—lands which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection;

(3) Class 3—lands which are principally valuable for the production of crops;

(4) Class 4—lands which are principally valuable for uses other than grazing, crop production, timber production, or watershed protection.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(1).

Cross-References

Classification required, Art. X, sec. 11, Mont. Const.

77-1-402. Basis for classification or reclassification. (1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203. When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part); amd. Sec. 6, Ch. 609, L. 1991.

77-1-403. Capability inventory. A capability inventory shall be made prior to changing the classification of state lands. Such inventory shall include, when appropriate to the classification, information on soils capability, vegetation, wildlife use, mineral characteristics, public use, aesthetic values, cultural values, surrounding land use, and any other resource, zoning, or planning information which is related to the classification.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

77-1-404. Records of state lands. All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs and whether it belongs to the public schools of the state or to a state institution or other entity according to the grant or instrument by which title to the land has passed to the state. They shall also show whether or not the coal or other minerals in the land are reserved by the United States and shall contain any other information the department considers necessary.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(4).

77-1-405. Island parks established — development limited. (1) In order to retain the integrity of the recreational experience associated with Montana's river and lake islands, development of undisputed state-owned or state-leased island property, which is hereby designated as island parks, including islands designated as state property under 70-18-203, lying within and surrounded by a navigable river, stream, or lake is limited, after April 30, 1997, to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park's primitive character by packing out trash;

(b) necessary latrine facilities if approved by the fish, wildlife, and parks commission;

(c) footings or pilings necessary for the construction of a bridge; and

(d) oil and gas leasing.

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises before, on, or after April 30, 1997.

History: En. Sec. 1, Ch. 449, L. 1997.

Compiler's Comments

Effective Date: Section 3, Ch. 449, L. 1997, provided: "[This act] [77-1-405] is effective on passage and approval." Approved April 30, 1997.

Cross-References

Island formed by division of stream, 70-18-205.

Ownership of certain islands and abandoned riverbeds, 77-1-102.

Recreational use of state lands, Title 77, ch. 1, part 8.

Oil and Gas Leases, Title 77, ch. 3, part 4.

Agricultural, grazing, and other surface leases, Title 77, ch. 6.

Navigable waters, 85-1-112.

Part 5

State Land Equalization Payments

77-1-501. List of state lands by county. The department shall, before the first Monday of April of every year, prepare and transmit a statement to the department of revenue that designates each county in which the state has real property in excess of 6% of the total land area of the county and from which the state derives grazing, agricultural, or forest income. The statement must contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land.

History: **En. Sec. 1, Ch. 235, L. 1967; amd. Sec. 54, Ch. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973; R.C.M. 1947, 81-1115; amd. Sec. 140, Ch. 27, Sp. L. November 1993.**

77-1-502. Computation of state land equalization payment. (1) The department of revenue shall compute the amount of taxes which would be payable on the county assessments of said property as if it were owned by and taxable to a taxpayer of such county.

(2) If the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed 12 cents per grazing acre, 35 cents per agricultural acre, and 12 cents per forest acre. The average tax may be derived from the most recent biennial report of the department of revenue. The total figure arrived at by this method shall be called the gross assessment figure.

(3) The county exemption factor shall be determined by dividing the percentage the state-owned land bears to the total land area of the county into 6%. This quotient shall be multiplied by the gross assessment figure, and the product is called the state exemption figure.

(4) The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment.

History: **En. Sec. 2, Ch. 235, L. 1967; amd. Sec. 55, Ch. 391, L. 1973; R.C.M. 1947, 81-1116.**

77-1-503. Form to be completed by department of revenue. The department shall provide a form for each county to be followed and completed by the department of revenue. The department of revenue shall, before October 1, make the computations required and submit to the department the completed forms, which must show the computations and method used in arriving at the state land equalization payment.

History: **En. Sec. 3, Ch. 235, L. 1967; amd. Sec. 56, Ch. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973; R.C.M. 1947, 81-1117; amd. Sec. 141, Ch. 27, Sp. L. November 1993.**

77-1-504. Processing of statements. The department shall examine for accuracy the statement returned by the department of revenue, and the state land equalization payment may not be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties that are eligible for state land equalization payments, and this claim must show the amount of money each eligible county will receive.

History: **En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973; R.C.M. 1947, 81-1118; amd. Sec. 142, Ch. 27, Sp. L. November 1993.**

77-1-505. Warrant for payments to counties. The department of administration shall, before December 1, approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment. The payments are statutorily appropriated as provided in 17-7-502.

History: **En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973; R.C.M. 1947, 81-1119; amd. Sec. 57, Ch. 422, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 422 inserted second sentence relating to a statutory appropriation. Amendment effective July 1, 1997.

77-1-506. County distribution. The county treasurer shall distribute the money received under this part within his county as hereinafter provided:

(1) Sixty percent of total payment shall be broken down into cents per acre of total state-owned land within the county and apportioned between the elementary school districts in accordance with the amount of state-owned land in each elementary district.

(2) Forty percent shall be allotted to the county road fund.

History: En. Sec. 6, Ch. 235, L. 1967; R.C.M. 1947, 81-1120.

Cross-References

County road funds, 7-14-2501.

County school equalization fund, 20-9-331.

77-1-507. School district use of proceeds. The money received by any school district under this part shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used in accordance with the provisions of 20-9-335.

History: En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973; R.C.M. 1947, 81-1121.

77-1-508. Repealed. Sec. 1, Ch. 214, L. 1979.

History: En. Sec. 9, Ch. 60, L. 1927; re-en. Sec. 1805.9, R.C.M. 1935; Sec. 81-205, R.C.M. 1947; redes. 81-1122 and amd. by Sec. 6, Ch. 428, L. 1973; R.C.M. 1947, 81-1122.

Part 6

Development of State Lands

77-1-601. Statement of policy. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting therefrom, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967; R.C.M. 1947, 81-2401.

Cross-References

Board to direct and control state lands, Art. X, sec. 4, Mont. Const.

Use of coal severance tax proceeds for development, operation, and maintenance of state parks, recreational areas, monuments, or historical sites, 15-35-108.

77-1-602. Definition of terms. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in the state special revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenue required by law to be placed in the Montana nonexpendable trust fund type and revenue from the sale of timber.

History: En. Sec. 2, Ch. 295, L. 1967; amd. Sec. 106, Ch. 428, L. 1973; R.C.M. 1947, 81-2402; amd. Sec. 36, Ch. 281, L. 1983; amd. Sec. 5, Ch. 14, Sp. L. January 1992.

Cross-References

The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Trust and agency fund types — state special revenue fund, 17-2-102.

School trustees to hold property in trust, 20-6-602.

Interest and income money, 20-9-341.

Income from state lands:

land donated for forestry purposes, 77-1-216.

for granting easement, 77-2-106.

sale of state land, 77-2-337.

prospecting permits, 77-3-106.

mining lease, 77-3-116.

nonmetallic minerals, except coal, oil, and gas, 77-3-206.

coal, 77-3-318.

oil and gas — credited to general fund unless otherwise disposed of, 77-3-436.

underground storage of natural gas, 77-3-501.

geothermal resources, 77-4-127.

surface leases, Title 77, ch. 6, part 5.

77-1-603. Rules. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this part.

History: En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973; R.C.M. 1947, 81-2408.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-604. Resource development account. A resource development account in the state special revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions, and objects for which the lands are held in trust. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part); amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Treasury fund structure — state special revenue fund, 17-2-102.

77-1-605. Types of developments. The developments contemplated may include those projects that will develop or conserve the various state land resources, including water, both surface and underground, grazing land, agricultural land, and timber land to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which are suitable for development and other expenses or costs which in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part).

77-1-606. Restriction on use of income from school and institutional lands. Money in the resource development account created in 77-1-604 that is derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands must be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred must be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973; R.C.M. 1947, 81-2404; amd. Sec. 2, Ch. 533, L. 1993.

77-1-607. *(Temporary)* **Deductions from income for development account — maximum percentage.** (1) The board shall determine the amount or percentage of income, not to exceed 3%, that is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income that is secured from the lands by the department for the trusts benefited by this part.

(2) The maximum percentage limitation in subsection (1) does not apply to income deducted and expended under the provisions of 77-1-613. *(Terminates June 30, 1999—sec. 4, Ch. 247, L. 1997.)*

77-1-607. *(Effective July 1, 1999)* **Deductions from income for development account — maximum percentage.** (1) The board shall determine the amount or percentage of income, not to exceed 2 1/2%, that is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this part.

(2) The maximum percentage limitation in subsection (1) does not apply to income deducted and expended under the provisions of 77-1-613.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973; R.C.M. 1947, 81-2405; amd. Sec. 3, Ch. 533, L. 1993; amd. Sec. 1, Ch. 247, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 247 in (1) substituted "3%" for "2 1/2%"; and made minor changes in style. Amendment effective July 1, 1997, and terminates June 30, 1999.

Termination: Section 4, Ch. 247, L. 1997, provided: "[This act] terminates June 30, 1999."

77-1-608. Crediting of deductions. All deductions from gross proceeds made in accordance with 77-1-607(1) must be paid into the account, and the balance of the proceeds must be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973; R.C.M. 1947, 81-2406; amd. Sec. 4, Ch. 533, L. 1993.

77-1-609. Investment of moneys in development account. The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973; R.C.M. 1947, 81-2407.

Cross-References

Unified investment program, Title 17, ch. 6, part 2.

77-1-610 through 77-1-612 reserved.

77-1-613. Deduction of portion of income received from sale of timber from state trust lands — creation of account. (1) There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year.

(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.

(3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(4) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs.

History: En. Sec. 1, Ch. 533, L. 1993; amd. Sec. 1, Ch. 157, L. 1995.

Part 7

Ownership Records of State-Owned Land

77-1-701. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Ownership record" means the original deed, abstract, and any other instrument signifying state ownership or other interest in real property.

(2) "State agency" means any board, bureau, department, commission, or officer of the state.

(3) "State land" means land held, possessed, or administered by the state by virtue of fee simple title, grant, or deed. This term does not include:

(a) land acquired through investments under the provisions of 17-6-201;

(b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

(c) land used for easements and rights-of-way.

History: En. Sec. 1, Ch. 467, L. 1987; amd. Sec. 3, Ch. 32, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 32 in definition of state land, in (a) after "through", deleted "foreclosure of any", after "investments" deleted "purchased", and at end substituted "17-6-201" for "17-6-211".

77-1-702. Transfer of records held by secretary of state. By November 1, 1987, the secretary of state shall transfer all ownership records on file in his office to the department. The department shall further transfer the records of land held or administered by the department of transportation for highway rights-of-way and maintenance to the department of transportation and any remaining ownership records, other than those of state lands, to the state agency administering the interest or property described in such records.

History: En. Sec. 2, Ch. 467, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Custody and reproduction of records by Secretary of State, 2-6-111.

Duties of Secretary of State, 2-15-401.

77-1-703. Filing of ownership records. Except as provided in 77-1-706, state agencies shall file with the department ownership records of state lands held by the agency.

History: En. Sec. 3, Ch. 467, L. 1987.

77-1-704. Department to maintain repository. The department shall provide a secure yet accessible repository for the ownership records of state land.

History: En. Sec. 4, Ch. 467, L. 1987.

77-1-705. Index and verification of ownership records. (1) The department shall establish and maintain a filing system and index of the following information on state land:

(a) legal description of the land;

(b) when the land was acquired or disposed of;

(c) name of the state agency administering or disposing of the land; and

(d) name of the grantor or grantee.

(2) To the extent feasible within available funding and personnel, the department shall:

(a) verify the accuracy of information contained in the ownership records; and

(b) perfect title to state land whenever necessary.

History: En. Sec. 5, Ch. 467, L. 1987.

77-1-706. Treatment of highway lands. The department of transportation is not required to file with the department records of land used for highway rights-of-way and maintenance but is required to file with the department ownership records of state land held for administrative purposes.

History: En. Sec. 6, Ch. 467, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 316, Ch. 418, L. 1995.

77-1-707. Rules. The department may adopt rules for implementing and administering this part concerning transfer and filing of ownership records.

History: En. Sec. 7, Ch. 467, L. 1987; amd. Sec. 317, Ch. 418, L. 1995.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Part 8
Recreational Use of State Lands

77-1-801. Recreational use license required to use state lands for general recreational purposes — penalty. (1) A person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection his recreational use license.

(3) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both.

History: En. Sec. 11, Ch. 609, L. 1991.

Cross-References

Peace officer defined, 1-1-207, 46-1-202.

77-1-802. Recreational use license — fee. (1) The fee for a recreational use license must attain full market value.

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

(b) Two dollars from the fee for each license, less 50 cents to be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9.

History: En. Sec. 12, Ch. 609, L. 1991; amd. Sec. 2, Ch. 586, L. 1993.

77-1-803 reserved.

77-1-804. Rules for recreational use of state lands — penalty. (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

(a) cabin site and homesite leases and licenses;

(b) the seasonal presence of growing crops; and

(c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

(b) damage to surface improvements of the lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control; or

(g) the presence of buildings, structures, and facilities.

(6) Rules adopted under this section may impose restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to $1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in 87-1-601(7).

History: En. Sec. 13, Ch. 609, L. 1991; amd. Sec. 284, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (8), at end, substituted "87-1-601(7)" for "87-1-601(6)"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

77-1-805. Liability of state and lessee. (1) The provisions of 70-16-302 that limit the liability of a landowner or his tenant for the recreational use of property apply to the state and any lessee of state lands used for general recreational purposes.

(2) The lessee is not responsible for the suppression of or for damages resulting from a fire on his leased land caused by a general recreational user, except that a lessee who observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority.

History: En. Sec. 14, Ch. 609, L. 1991.

77-1-806. Prior notification to lessee of recreational use — trespass — penalty. (1) If a lessee of state lands under this part desires to be notified prior to anyone entering upon his leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or his agent's name, address, telephone number, and method of notification. The lessee or his agent shall make himself available to receive notice from recreational users or provide an alternative means for notice as prescribed by rule. When state land is posted, recreational users shall contact and identify themselves to the lessee or his agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Each recreational user of state lands shall obtain permission of the lessee or his agent before entering the adjacent private property owned by the lessee. Entry to private property from adjacent state lands without permission

of the landowner or his agent is an absolute liability offense. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201.

History: En. Sec. 15, Ch. 609, L. 1991.

77-1-807 reserved.

77-1-808. State lands recreational use account. (1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the recreational use license established by 77-1-802;

(b) all revenue received from the imposition of fines under 77-1-801 and 77-1-806 and from civil penalties imposed pursuant to 77-1-804; and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the state lands recreational use account must be used by the department for the following purposes:

(a) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(b) assistance in weed control management necessary as a result of recreational use of state lands;

(c) protection of the resource value of the trust assets; and

(d) administration and management for the implementation of recreational use of state lands.

History: En. Sec. 16, Ch. 609, L. 1991; amd. Sec. 68, Ch. 509, L. 1995.

77-1-809. Compensation for damage to improvements, growing crops, or livestock. A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from appropriations from the state lands recreational use account established by 77-1-808, and the liability of the department for damage payments is limited to the available appropriation. Claim applications are to be considered in the order they are received.

History: En. Sec. 17, Ch. 609, L. 1991; amd. Sec. 69, Ch. 509, L. 1995.

77-1-810. Weed control management. (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from appropriations from the state lands recreational use account pursuant to 77-1-808.

History: En. Sec. 18, Ch. 609, L. 1991; amd. Sec. 70, Ch. 509, L. 1995.

CHAPTER 2

TRANSFERS AND RESERVATIONS OF PROPERTY INTERESTS

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Part 1
Easements

Part Cross-References

Easements of state lands authorized, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Servitudes — easements, Title 70, ch. 17.

77-2-101. Easements for public uses. (1) The board may grant easements in state lands for schoolhouse sites and grounds, public parks, community buildings, cemeteries, and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of those properties.

(2) The board may grant an easement for right-of-way across or upon any portion of state lands for any public highway or street, any ditch, reservoir, railroad, private road, telegraph or telephone line, or any other public use as defined in 70-30-102. This subsection shall not be construed to grant authority to convey any such land, except for the purposes above set forth.

History: (1)En. Sec. 57, Ch. 60, L. 1927; re-en. Sec. 1805.57, R.C.M. 1935; amd. Sec. 6, Ch. 257, L. 1965; amd. Sec. 53, Ch. 428, L. 1973; Sec. 81-802, R.C.M. 1947; (2)En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; Sec. 81-804, R.C.M. 1947; R.C.M. 1947, 81-802, 81-804(part).

Cross-References

State departments — maintenance of facilities throughout state, 2-15-112.

Approval of Department of Administration — acquisition of property in Helena area by state agencies, 2-17-101.

Department of Administration custodian of property in Capitol area, 2-17-811.

Authorization for County Commissioners to obtain property, 7-8-2201.

Authorization for city to erect buildings, 7-8-4101.

City authorized to establish trafficways and public grounds, 7-14-4101.

City authorized to establish parks, 7-16-4101.

Selection of school sites, 20-6-621.

Department of Transportation — acquisition of property, 60-4-102.

Easements allowed on riparian land, 77-2-303.

77-2-102. Application for easement. (1) Application for an easement on state land must be made to the department. Except as provided in subsection (3), the application must describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information that the department requires.

(2) This application must be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, duly verified by the affidavit of the engineer or surveyor who prepared the application. These plats must show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When considered necessary by the department, these plats must show all these facts for smaller subdivisions as the circumstances may render desirable for the state.

(3) If the purpose of the right-of-way applied for is the transmission or distribution of electric energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat. The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. An archaeological survey is not required if in the opinion of the department no heritage properties would be impacted.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part); amd. Sec. 1, Ch. 300, L. 1995.

77-2-103. Processing of application. (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation must be the full market value of the estate or interest disposed of through the granting of the right-of-way easement, and the damages must be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right-of-way is granted according to the plat, the plat is the official plat of the right-of-way and must be retained in the office of the department.

(2) If the state land over or through which a right-of-way is applied for is under certificate of purchase or sales contract, the purchaser or the purchaser's assignee must be made a party to the proceedings and the purchaser's or assignee's consent in writing to the laying out and establishment of the proposed highway, street, or other easement and to the amount of compensation and damages to be paid must be filed with the board before the right-of-way is granted. The board is the judge of how much compensation and damages must be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, must be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(2), (3); amd. Sec. 2, Ch. 300, L. 1995.

Cross-References

Full market value for estate or interest in state lands, Art. X, sec. 11, Mont. Const.

77-2-104. Nature of easements. Easements granted under 77-2-102 and 77-2-103 include permission to install and maintain poles, anchors, and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part).

77-2-105. Termination of easements. Whenever lands granted for any of the purposes mentioned in 77-2-101(2) shall cease to be used for such purposes, said easement shall forthwith terminate upon notice to that effect to the person to whom such grant was made, served at his last known post-office address.

History: En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part).

Cross-References

How easement extinguished, 70-17-111.

77-2-106. Charge for granting of easement. The board shall charge and cause to be collected the full market value of the estate or interest disposed of through the granting of any such easement and also fix, charge, and cause to be collected the amount of the actual damages resulting to the remaining land or lands from the granting of such easement as nearly as the same can be ascertained. Where a road follows the section lines of state lands, the increased value accruing to said lands on account of construction of a road on said right-of-way easement shall be taken into consideration by the board in determining compensation, if any, for the easement.

History: En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part).

Cross-References

Full market value for estate or interest in state lands, Art. X, sec. 11, Mont. Const.

77-2-107. Involvement of lessee when land subject to prior lease. (1) Whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving the grant shall give timely notice to the lessee and shall make just settlement with the lessee for any damages resulting to the lessee's improvements, crops, or leasehold interests.

(2) After the settlement is made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under lease and otherwise cooperate in the opening of the right-of-way. Proof must be filed with the board that the settlement has been made before the deed to the easement is issued.

(3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and the third by the two appointed arbitrators.

(b) If a party refuses to appoint an arbitrator within 15 days of being requested to do so by the director of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director has the same duties and powers as if appointed by one of the parties.

(c) The arbitrators may fix reasonable compensation for their services. The compensation must be paid in equal shares by the owner of the easement and the lessee.

(d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties; however, if either party is dissatisfied with the valuation, the party may, within 10 days, appeal from their decision to the department. The department shall examine the easements, and, except as provided in subsection (3)(e), its decision on the appeal is final. The department shall collect the actual cost of the reexamination from the owner of the easement and the lessee in the proportion that, in its judgment, justice may demand.

(e) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court in Lewis and Clark County for judicial review of the decision.

History: En. Sec. 63, Ch. 60, L. 1927; re-en. Sec. 1805.63, R.C.M. 1935; amd. Sec. 3, Ch. 108, L. 1939; R.C.M. 1947, 81-805; amd. Sec. 1, Ch. 39, L. 1983; amd. Sec. 318, Ch. 418, L. 1995.

Cross-References

Arbitration, Title 27, ch. 5.

77-2-108. Repealed. Sec. 4, Ch. 157, L. 1981.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(2), (3).

Part 2

Exchanges of Land

Part Cross-References

Authority of Board to exchange land, Art. X, sec. 4, Mont. Const.

77-2-201. Exchange of land with United States or tribal governments. (1) (a) The board may enter into contracts or agreements with the United States or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other parcel of state lands, provided that the state shall, in lieu of the rights so waived and relinquished, receive from the United States other lands of equal or greater value.

(b) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with Public Law 88-607, as amended, (43 U.S.C. 1411 through 1418), and the current user of the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

(2) The board may enter into a contract or agreement with a tribal government as defined in 18-11-102 or with the United States for the relinquishment to the tribal government or to the United States in trust for the tribal government of any rights of the state to some or all state lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government; however, the state, in exchange for these relinquished rights, must receive from the tribal government or the United States lands of equal or greater value. No contract or agreement may be entered into under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be exchanged are located.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(1), (3); amd. Sec. 7, Ch. 15, L. 1979; amd. Sec. 1, Ch. 628, L. 1985.

Cross-References

Restrictions on exchange of lands with United States, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Status of exchanged lands, 77-2-217.

77-2-202. Exchange of land with counties. The board may accept on behalf of the state title in fee simple to any land owned by a county in the state and may convey in exchange therefor state land of approximately the same area and of a value not higher than the land received from the county if the exchange will result in consolidating the state lands into more compact bodies.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(2).

Cross-References

Authorization for County Commissioners to obtain land, 7-8-2201.

77-2-203. Exchange for private land. (1) The board is authorized to exchange state land for private land provided that the private land is of equal or greater value, as determined by the board after appraisal by a qualified land appraiser, than the state land and as closely as possible equal in area. The contents of the appraisal must be made available to any person who makes a written request to the board. The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

(2) If the requirements of subsection (1) and 77-2-204 are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other bodies of water.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(1), (3); amd. Sec. 2, Ch. 136, L. 1983; amd. Sec. 1, Ch. 287, L. 1985.

77-2-204. Notification of proposed exchange — hearing. (1) Upon receipt of a proposal for an exchange of land under this part, the board shall give notice of the proposed exchange by certified mail to each person who has leased, under chapter 1 of this title, any portion of land involved in the proposed exchange. Any such leaseholder may present written or oral comments on the proposed exchange to the board before or during the hearing required by subsection (2). The notice must contain a statement informing the recipient of this right to comment.

(2) A public hearing on any exchange under this part shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised before or during any such hearing pursuant to subsection (1), the board shall make findings of fact responding to such objections and explaining their action.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(2); amd. Sec. 2, Ch. 287, L. 1985.

77-2-205. Restriction on exchange for private land. No exchange under 77-2-203 shall be made which will induce or encourage large-scale commercial, industrial, or residential development unless the value of such development is considered in determining the fair market value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts which the state would receive under the proposed exchange.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(4).

77-2-206. Settlement for improvements. If any state land is exchanged on which there are improvements belonging to a lessee and some person other than the lessee is the transferee, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the exchange is completed. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the transferee in an exchange. If settlement is not reached within 6 months of date of exchange, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: **En. Sec. 4, Ch. 287, L. 1985.**

77-2-207. Approval or disapproval of exchanges. All exchanges of state lands are subject to approval and confirmation by the board, and no exchange is considered completed until after such approval and confirmation. The board has the power and it is its duty to disapprove any exchange which in its opinion would be disadvantageous to the state.

History: **En. Sec. 3, Ch. 287, L. 1985.**

77-2-208 through 77-2-210 reserved.

77-2-211. Exchange of timbered, cut-over, or burned-over lands. The board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange therefor may convey not to exceed an equal value, as determined by the board after appraisal by a qualified land appraiser, of similar state land. However, no such exchange may be made except that which in the opinion of the board will benefit the public interest. For the purpose of such an exchange, all state lands, including those referred to in 77-2-303(3), 77-2-311, and 77-5-101, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released.

History: **En. Sec. 1, Ch. 180, L. 1931; re-en. Sec. 1995.1, R.C.M. 1935; amd. Sec. 99, Ch. 428, L. 1973; R.C.M. 1947, 81-2201; amd. Sec. 3, Ch. 136, L. 1983.**

77-2-212. Rules. The board shall adopt and promulgate such rules and methods of procedure affecting or touching the exchanges of lands under 77-2-211 through 77-2-217 as in its judgment seems advisable to the end that the public interests may be conserved.

History: **En. Sec. 5, Ch. 180, L. 1931; re-en. Sec. 1995.5, R.C.M. 1935; amd. Sec. 103, Ch. 428, L. 1973; R.C.M. 1947, 81-2205.**

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-2-213. Department to investigate. When a proposal for an exchange pursuant to 77-2-211 is made and the owners of the respective tracts involved seem agreeable to negotiate such exchanges, the proposal shall be referred to the department and the department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal as may affect the public interest.

History: **En. Sec. 2, Ch. 180, L. 1931; re-en. Sec. 1995.2, R.C.M. 1935; amd. Sec. 100, Ch. 428, L. 1973; R.C.M. 1947, 81-2202; amd. Sec. 2, Ch. 286, L. 1985.**

77-2-214. Investigation and findings concerning exchange of land. (1) The department shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal, including its reasons therefor in writing.

(2) After considering the report and recommendation and making such further investigation as it considers advisable, the board shall consider the entire matter, make findings and conclusions concerning the proposal, and make an order:

(a) rejecting and dismissing the proposal if in the judgment of the board the exchange is not in the public interest; or

(b) accepting the proposal and ordering the exchange to be made if in the judgment of the board the exchange is in the public interest and should be made.

(3) An order accepting the proposal shall contain an accurate description of all lands to be exchanged.

History: **En. Sec. 3, Ch. 180, L. 1931; re-en. Sec. 1995.3, R.C.M. 1935; amd. Sec. 101, Ch. 428, L. 1973; R.C.M. 1947, 81-2203; amd. Sec. 8, Ch. 15, L. 1979; amd. Sec. 3, Ch. 286, L. 1985.**

77-2-215. Notice and hearing concerning exchange of timbered lands. If the board approves a proposal for exchange pursuant to 77-2-211, the department shall publish at least once in a newspaper of general circulation in each county in which any of the lands involved are located a notice stating in general terms the proposal and describing the lands involved and the ownership of the lands. The notice must fix a day not less than 20 and not more than 60 days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

History: **En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(1); amd. Sec. 319, Ch. 418, L. 1995.**

77-2-216. Final order of board. The board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange, as authorized by 77-2-211.

History: **En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(2); amd. Sec. 1, Ch. 184, L. 1985.**

77-2-217. Status of exchanged lands. All lands taken in exchange under 77-2-211 through 77-2-216 for lands granted by the United States to the state of Montana prior to July 1, 1931, shall be subject to the same restrictions, limitations, and provisions as the lands granted by the United States are now subject to. All lands granted by the state in carrying out such exchanges shall thereafter be free from the restrictions and limitations provided by The Enabling Act of the state of Montana or the other grant from the United States.

History: **En. Sec. 6, Ch. 180, L. 1931; re-en. Sec. 1995.6, R.C.M. 1935; R.C.M. 1947, 81-2206(part).**

Cross-References

Exchange of lands with United States, 77-2-201.

Part 3

Sales

Part Cross-References

Sale of state lands — disposition, Art. X, sec. 11, Mont. Const.

Public sales of state lands, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Authority of Board — sales, 77-1-204.

Sale of leased cabin or home sites or city or town lots, 77-2-318.

77-2-301. Sales of state land under board control. The board is hereby vested with the power and authority to decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require. As a general rule and except as provided in 77-2-318, no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least 12 families.

History: En. Sec. 70, Ch. 60, L. 1927; re-en. Sec. 1805.70, R.C.M. 1935; R.C.M. 1947, 81-907; amd. Sec. 1, Ch. 602, L. 1989.

77-2-302. Disposition of former institutions and certain federal land grants. (1) Notwithstanding any other section in this chapter, any lands, including buildings, that were formerly used as or by a state institution and that are no longer used for institutional purposes may be disposed of in whole or in part on the terms and in the manner that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of the property may not be finally concluded until 60 days' public notice of the terms of the proposed disposal has been given.

(2) Notwithstanding any other section in this chapter, any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or acquired by the state as remedial action pursuant to 75-10-704, 75-10-711, or 75-10-712 may be disposed of in whole or in part on the terms and in the manner that the board, after consultation with the director of the department of environmental quality, determines to be in the state's best interest.

History: En. 81-907.1 by Sec. 1, Ch. 410, L. 1977; R.C.M. 1947, 81-907.1; amd. Sec. 3, Ch. 274, L. 1989; amd. Sec. 320, Ch. 418, L. 1995.

Cross-References

Use or disposition of facility, 53-20-505.

Who may purchase, 77-2-306.

77-2-303. Restrictions on land available for sale. (1) Except as provided in 77-2-318, lands classified as timberlands are not subject to sale, but timber thereon may be sold and disposed of in the manner provided by law.

(2) Lands which in the judgment of the board are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits are not subject to sale, either the surface land or any of such deposits therein. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(3) (a) There is also reserved from sale from all state lands bordering on navigable lakes or bordering on nonnavigable meandered lakes and from all state lands bordering on navigable streams, as the board may deem in the best interests of the state, a strip of land which shall include all the land lying between low-water mark and high-water mark and which in addition shall extend in width landward from the line of high-water mark of such lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of such abutting government lot at its narrowest point is less than 100 feet, then the strip hereby reserved shall extend to and include the next adjoining 40-acre tract or government lot. The land

reserved from sale by this subsection shall be subject to the granting of easements the same as other state lands.

(b) Such strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may, however, be leased as provided in this title for the leasing of other state lands.

History: (1), (2)En. Sec. 64, Ch. 60, L. 1927; re-en. Sec. 1805.64, R.C.M. 1935; amd. Sec. 55, Ch. 428, L. 1973; Sec. 81-901, R.C.M. 1947; (3)En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; Sec. 81-903, R.C.M. 1947; R.C.M. 1947, 81-901, 81-903(part); amd. Sec. 2, Ch. 602, L. 1989.

Cross-References

Exchange of state riparian land for private riparian land, 77-2-203.

Exchange of timbered, cut-over, burned-over, or riparian lands, 77-2-211.

Leases:

nonmetallic minerals, excluding coal, oil, and gas, Title 77, ch. 3, part 2.

coal, Title 77, ch. 3, part 3.

oil and gas, Title 77, ch. 3, part 4.

Hydroelectric powersites — sale prohibited, 77-4-201.

State forests, Title 77, ch. 5, part 1.

Riparian ownership subject to fishing rights between highwater lines, 87-2-305.

77-2-304. Mineral reservations in state lands. All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state lands, except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. All those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state lands acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon these lands to prospect for, develop, mine, and remove those deposits and to occupy and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

History: En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; re-en. Sec. 1805.65, R.C.M. 1935; amd. Sec. 1, Ch. 184, L. 1961; amd. Sec. 56, Ch. 428, L. 1973; R.C.M. 1947, 81-902; amd. Sec. 1, Ch. 157, L. 1981.

Cross-References

Reservation in certificate of purchase, 77-2-327.

Reservation in patent, 77-2-343.

Mining leases — bond to protect rights of prior purchaser, 77-3-120.

Sales, contracts for sale, and leases subject to mining leases, 77-3-122.

Coal leases — care taken to protect rights of prior purchasers, 77-3-304.

Oil and gas leases — care taken to protect rights of prior purchasers, 77-3-401.

Geothermal leases — compensation for damages to surface lessee, 77-4-107.

77-2-305. Lands within federal irrigation projects. Whenever state lands are located within the boundaries of federal irrigation projects, the land shall be sold in conformity with the classification of farm units as made by the United States, and all certificates of purchase issued for such lands shall show that the lands are located within a federal irrigation project and are or will be liable for their proper share of the reclamation charges.

History: En. Sec. 69, Ch. 60, L. 1927; re-en. Sec. 1805.69, R.C.M. 1935; R.C.M. 1947, 81-906.

Cross-References

Form of patent lien clause, 77-2-343.

77-2-306. Who may purchase. (1) State lands shall be sold only to citizens of the United States, persons who have declared their intentions to become citizens, corporations organized under the laws of this state, or towns, cities, counties, or consolidated local governments of this state. No person shall be qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands shall be sold only to actual settlers or to persons who will improve the same and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value.

(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in 77-2-307 for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

(3) State lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government may be sold to a tribal government as defined in 18-11-102. No sale involving land in excess of the acreage limitations in 77-2-307 may be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part); amd. Sec. 2, Ch. 628, L. 1985; amd. Sec. 1, Ch. 313, L. 1991.

77-2-307. Limitation on acreage. (1) Except as provided in subsection (2), no person or corporation may purchase more than one section of state land, and this area shall not include more than 160 acres of land susceptible of irrigation.

(2) The limitations in subsection (1) as to area and irrigability do not apply to:

(a) lands within a federal irrigation project wherein the Congress of the United States of America authorizes water to be furnished to an area exceeding 160 irrigable acres; or

(b) lands to be sold to a tribal government as provided in 77-2-306.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part); amd. Sec. 3, Ch. 628, L. 1985.

77-2-308. Approval or disapproval of sales. All sales of state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).

77-2-309. Discretion of board with respect to surveying and platting. Except as provided in 77-2-312, it shall be entirely optional with the board whether or not state lands or any part thereof shall be surveyed, platted, and laid off into blocks and lots as herein provided, as may appear to be for the best interests of the state.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part).

77-2-310. Certain lands to be platted before sale. (1) Any part of state lands adjacent to cities or towns and other state lands which in the opinion of the board may be wanted for residence or business lots shall before sale, at such time as the board may deem to be for the best interests of the state, be surveyed and laid off in blocks, lots, streets, alleys, avenues, highways, public squares, market places, and parks in conformity with the laws of the state for the survey and platting of townsites and additions thereto, conforming as nearly as may be with the ordinances of such city or town regarding the platting of additions thereto. The board must cause correct maps and plats of such lands to be made and recorded when so surveyed and not otherwise. No fee shall be charged by the county recorder or by any city officer for filing or recording such maps or plats when recorded on behalf of the state.

(2) Before the lands so surveyed and laid off are offered for sale the same shall be appraised, a separate appraisal to be placed on each lot. Such surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.

History: En. Sec. 67, Ch. 60, L. 1927; re-en. Sec. 1805.67, R.C.M. 1935; R.C.M. 1947, 81-904.

Cross-References

Montana Subdivision and Platting Act — applicability, 76-3-205.

77-2-311. Survey and plat of shore lands. The board may in its discretion cause any part of the lands bordering on lakes described in 77-2-303(3) and on navigable streams which are reserved from sale to be surveyed and platted into blocks and lots, the lots to be not less than 125 feet in width, the width to be measured in the general direction of the abutting water front; but in all such surveys and plats the strip of 100 feet in width along the water front, referred to in 77-2-303(3)(a), shall be reserved for the use and enjoyment of the public.

History: En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; R.C.M. 1947, 81-903(part).

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Subject to exchange for timbered, cut-over, or burned-over land, 77-2-211.

77-2-312. Subdivision of lands in or near municipalities. (1) Lands within the limits of a town or city or within 3 miles of the limits must be subdivided into lots or tracts of 5 acres or less before being offered for sale.

(2) When tracts of 5 acres or less have been sold, the board shall, as necessary, cause the plat to be filed with the clerk and recorder of the county in which the land is situated, but if a person purchases two or more adjoining lots or tracts, the adjoining lots must at the option of the purchaser be included in one certificate of purchase.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part); amd. Sec. 1, Ch. 155, L. 1993.

Cross-References

Montana Subdivision and Platting Act — applicability, 76-3-205.

77-2-313. Land subject to taxation. (1) State lands purchased from the state are subject to taxation. The department of revenue shall assess the purchaser for the full value of the land on January 1 following the date of purchase. The holder of certificates of purchase to lands within an irrigation district is liable for the entire irrigation district tax levied against the land.

(2) The improvements on the land must be assessed and taxed as other improvements on farm lands.

(3) On or before January 15 of each year, the department shall furnish the department of revenue with a complete list of all state lands sold in each county during the previous calendar year. This list must show the name and address of the purchaser, the legal description of the land, and the acreage contained in the purchase.

History: En. Sec. 92, Ch. 60, L. 1927; re-en. Sec. 1805.92, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1953; amd. Sec. 52, Ch. 391, L. 1973; amd. Sec. 67, Ch. 428, L. 1973; amd. Sec. 7, Ch. 388, L. 1975; R.C.M. 1947, 81-928; amd. Sec. 143, Ch. 27, Sp. L. November 1993.

Cross-References

Property subject to taxation — classification, 15-6-101.

Lands within federal irrigation projects, 77-2-305.

Taxes and assessments — irrigation districts, Title 85, ch. 7, part 21.

77-2-314. Reversion of lands to state. If any lands sold under this title revert to the state for any reason, the department shall notify the department of revenue and the county treasurer of the county in which the land is situated of that fact. Upon the receipt of the notice, the department of revenue shall cancel any assessment of the land for that year, and the county treasurer shall cancel all tax liens against the land.

History: En. Sec. 94, Ch. 60, L. 1927; re-en. Sec. 1805.94, R.C.M. 1935; amd. Sec. 53, Ch. 391, L. 1973; amd. Sec. 68, Ch. 428, L. 1973; R.C.M. 1947, 81-930.

Cross-References

Exemption from property taxes — state land, 15-6-201.

77-2-315. Participation in irrigation districts — lien status of land. (1) A purchaser of state lands is hereby authorized and empowered to sign any petition that he may desire to sign for the creation of an irrigation district and the inclusion of the land purchased from the state in such irrigation district and any other petition relating to irrigation districts affecting the land so purchased by him from the state. Such petition or petitions shall have the effect of making all the interest that he then has in such land purchased from the state and all interest which he may subsequently acquire therein subject to the same liens and charges as privately owned lands under such irrigation district; and if for any reason his certificate to such state lands and his rights thereunder should be canceled and later such certificate be reinstated or a new certificate issued, such liens and charges shall stand against the interest in such lands of the holder of such certificate.

(2) The board for and on behalf of the state of Montana is hereby empowered to sign a petition for the inclusion of any lands belonging to the state in an irrigation district organized or to be organized for the purpose of cooperating with the United States under the federal reclamation laws or any

act of congress relating to reclamation projects and to sign any petition for the execution of a contract between such district and the United States. The interest of the state in any lands within an irrigation district shall not be subject to assessment or taxation for any purpose whatever, nor shall the state be liable for the payment of any costs or charges whatever arising from the fact that its lands are included within an irrigation district.

(3) The interest of a purchaser of state lands in the land purchased shall be subject to the same liens as other real estate; provided, however, that in the case of sale, only the interest of the purchaser or of the assignee shall be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from the state under the certificate of purchase and a new certificate of purchase shall be issued to the person entitled thereto upon satisfactory proof being submitted to the board. In the case of sale under execution or decree of court such new certificate of purchase shall not be issued by the board until the period of redemption from such sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate shall not be issued until the tax deed has been issued.

History: En. Sec. 93, Ch. 60, L. 1927; amd. Sec. 1, Ch. 58, L. 1929; re-en. Sec. 1805.93, R.C.M. 1935; R.C.M. 1947, 81-929.

Cross-References

Tax deeds — ownership interests in land sold for taxes, Title 15, ch. 18.

Period of redemption — reinstatement of canceled certificates of purchase, 77-2-333.

Petition for organization of water district, 85-7-104.

Irrigation district special tax or assessment — lien, 85-7-2108.

77-2-316. Repealed. Sec. 4, Ch. 157, L. 1981.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(1), (5), (6).

77-2-317 reserved.

77-2-318. Sale of leased cabin or home sites or city or town lots. (1) At the request of the lessee and if consistent with the orderly development and management of state lands, the board may make available for sale, in the manner provided in this part, any leased cabin or home site or city or town lot that was under lease on October 1, 1989.

(2) The lessee requesting the sale shall have prepared a current certificate of survey for the property. The cost of preparation of the certificate of survey must be included in the settlement for improvements, as provided for in 77-2-325, if a person other than the lessee is the purchaser.

(3) The sale of a lease is exempt from the subdivision laws, except that the development of any new, replacement, or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

(4) The sale of a leased cabin or home site or city or town lot under 77-2-318 through 77-2-320 must be completed no later than 10 years after October 1, 1989. A lessee may request a lease sale at any time during the 10-year period. Upon request, the board may grant a lessee with a disability or a lessee 65 years of age or older an additional 10-year period to request a sale of leased land.

(5) Upon a sale of leased land, the department shall, upon compliance with 77-2-101 through 77-2-106, grant a permanent easement across state lands to secure access using current routes.

History: En. Sec. 3, Ch. 602, L. 1989; amd. Sec. 76, Ch. 472, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 472 in (4), in third sentence, substituted "lessee with a disability" for "handicapped lessee".

77-2-319. Conservation easement for certain sales. As a condition of any sale initiated pursuant to 77-2-318, the board shall, if consistent with its trust responsibility, grant to the state of Montana a conservation easement, as provided for in 76-6-203, for the leased cabin or home site or city or town lot to be sold. The conservation easement must run with the land in perpetuity and must:

(1) prohibit subdivision of the land, lake, or stream;

(2) for property within 100 feet of a river, stream, or lake, prohibit the cutting of trees except as necessary for construction on the lot, fire prevention, safety, or protection of personal property; and

(3) require that any permanent structure be set back 25 feet from the high-water mark of a lake or stream.

History: En. Sec. 4, Ch. 602, L. 1989.

77-2-320. Appraisal review board. The department shall establish an appraisal review board consisting of three independent appraisers who shall make the final decision on a disputed state appraisal made for purposes of 77-2-318 when the appraisal value is less than the amount of bid made pursuant to 77-2-323.

History: En. Sec. 5, Ch. 602, L. 1989.

77-2-321. Sales to be at public auction. All sales of state lands shall be only at public auction held at the county courthouse of the county in which the lands are located. In case no suitable room can be found in such courthouse at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such courthouse by public announcement made at the courthouse at the time fixed for beginning the sale.

History: En. Sec. 72, Ch. 60, L. 1927; re-en. Sec. 1805.72, R.C.M. 1935; amd. Sec. 3, Ch. 184, L. 1961; R.C.M. 1947, 81-909.

Cross-References

Public sale after advertising required, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-2-322. Notice of sale. (1) The department shall give notice of each sale by publication in a newspaper of general circulation in the county where the sale is to be held, once each week through the 4 consecutive weeks preceding the date of sale. The notice shall give the day, date, and time of the beginning of the sale and contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing them with reference to section number and subdivision of the section or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised value per acre and the appraised value of each lot. As a general rule, nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one section.

(2) For the convenience of the bidders, the department may assign to the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

(3) The notice shall also give the terms and conditions of sale and any additional information the department considers useful.

History: En. Sec. 73, Ch. 60, L. 1927; re-en. Sec. 1805.73, R.C.M. 1935; amd. Sec. 4, Ch. 184, L. 1961; amd. Sec. 57, Ch. 428, L. 1973; R.C.M. 1947, 81-910.

Cross-References

Advertising required for sale of state land, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-2-323. Sale procedure and limitation. (1) At the time fixed for the sale, the lands must be offered for sale at auction in the order that they appear in the notice of sale. Under the direction of the department, the lands must be sold to the highest qualified bidder under the following restrictions:

(a) Lands may not be sold for less than the value determined by the board after appraisal by a qualified land appraiser.

(b) Tillable lands capable of producing agricultural crops may not be sold for less than $10 an acre.

(c) Lands principally valuable for grazing purposes may not be sold for less than $5 an acre.

(2) The lands must be sold as nearly as practicable according to the subdivisions in which they are advertised, and care must be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(4) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased, the successful bidder shall forfeit to the state not less than $50 or more than $1,000, to be determined by the board according to the circumstances of the case. If the forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery of the amount in the name of the state. The forfeiture amount must be deposited in the state general fund.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part); amd. Sec. 4, Ch. 136, L. 1983; amd. Sec. 58, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 in (4) inserted last sentence relating to forfeitures deposited in the state general fund; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Requirements of minimum prices, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Initial payment on day of sale, 77-2-329.

77-2-324. Preference to lessee of land. The lessee of the land need not make a higher bid than others, but he shall have the option to match the high bid and must be given the preference. If the lessee matches the high bid, bidding must be reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid and be awarded the sale.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part); amd. Sec. 6, Ch. 602, L. 1989.

Cross-References

Disposition of former institutions, 77-2-302.

77-2-325. Settlement for improvements. If any state land is sold on which there are improvements belonging to a lessee and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within 6 months of date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 83, Ch. 60, L. 1927; re-en. Sec. 1805.83, R.C.M. 1935; amd. Sec. 9, Ch. 257, L. 1965; amd. Sec. 61, Ch. 428, L. 1973; R.C.M. 1947, 81-919.

77-2-326. Time of possession. In the case of lands under lease the purchaser shall be given possession by the state on March 1 next succeeding the date of sale and not before unless the lease expires prior to that date, except through special agreement between the purchaser and the lessee.

History: En. Sec. 84, Ch. 60, L. 1927; re-en. Sec. 1805.84, R.C.M. 1935; R.C.M. 1947, 81-920.

77-2-327. Certificate of purchase. (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the director of the department and attested by the seal of the board. The certificate of purchase must contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate must reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that have been granted by the board and must contain the reservations in favor of the state provided for in 77-2-304 relating to coal, oil, and mineral rights in the land.

(2) The certificate must also contain information regarding the lien of the state on crops and improvements on the land; installments of principal, interest, and taxes; and any additional conditions, agreements, and information that the board considers necessary in order to carry out the intent of this part.

History: En. Sec. 85, Ch. 60, L. 1927; re-en. Sec. 1805.85, R.C.M. 1935; amd. Sec. 62, Ch. 428, L. 1973; R.C.M. 1947, 81-921; amd. Sec. 2, Ch. 157, L. 1981; amd. Sec. 321, Ch. 418, L. 1995.

Cross-References

Easements to pass with land, 70-20-308.

Certificate for land within federal irrigation projects to state liability for share of reclamation charges, 77-2-305.

Approval of sale by Board required, 77-2-308.

77-2-328. Additional rules — deposit of fees. The board may prescribe any additional rules for the conduct of these sales as in its judgment the interests of the state may demand. Any fees collected by a rule adopted pursuant to this section must be deposited in the state general fund.

History: En. Sec. 76, Ch. 60, L. 1927; re-en. Sec. 1805.76, R.C.M. 1935; R.C.M. 1947, 81-913; amd. Sec. 59, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 inserted second sentence relating to fees deposited in state general fund; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-2-329. Terms of payment. (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may desire, but in no case less than 10% of the total sales price. In case the balance on the purchase price is not an exact multiple of $25, then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of $25.

(2) The purchaser shall pay the balance of the purchase price within 30 days. The department may extend this deadline up to 30 additional days for good cause.

History: En. Sec. 79, Ch. 60, L. 1927; re-en. Sec. 1805.79, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965; amd. Sec. 10, Ch. 22, L. 1971; amd. Sec. 59, Ch. 428, L. 1973; amd. Sec. 1, Ch. 191, L. 1974; R.C.M. 1947, 81-915; amd. Sec. 1, Ch. 104, L. 1987; amd. Sec. 1, Ch. 488, L. 1991.

Cross-References

Penalty for failure to make initial payment, 77-2-323.

77-2-330. Computation of interest and payment schedule. The balance of the purchase price shall draw interest from the date on which the sale was confirmed and approved by the board, and all installments on principal and interest shall become due and payable on that date in each succeeding year until payment has been made in full.

History: En. Sec. 86, Ch. 60, L. 1927; re-en. Sec. 1805.86, R.C.M. 1935; R.C.M. 1947, 81-922.

77-2-331. Manner of making payments. (1) The department is not required to accept fractional payments of the installments on certificate of purchase on account of the complications arising from the division of payments.

(2) The purchaser may make payment of one or more installments before the same becomes due, but unless such payments are made at least 6 months before the installments become due, no reduction may be made in the interest payments. If installments on principal and interest are paid more than 6 months prior to the due date, the interest from the date of such payment shall be figured upon the balance of the principal unpaid after the advance payment has been made up to the date on which it comes due.

(3) If for any reason any installment is not paid when due, the total of that installment, including payment on the principal and payment on interest, shall

draw penalty interest at the rate of 6% per annum from the date due until the date actually paid.

(4) Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

History: En. Sec. 87, Ch. 60, L. 1927; re-en. Sec. 1805.87, R.C.M. 1935; amd. Sec. 63, Ch. 428, L. 1973; R.C.M. 1947, 81-923.

77-2-332. Procedure in case of default. (1) If any purchaser or assignee of state land defaults for a period of 30 days or more in the payment of any of the installments due on his certificate of purchase, the certificate is subject to cancellation. The department shall mail to him at his last known post-office address a notice of default and pending cancellation. The notice shall give him 60 additional days from the date of mailing the notice in which to make payment of the delinquent installment or installments with penalty interest.

(2) If he fails to make the payment within 60 days, the certificate of purchase shall from that date and without further notice be void, the duplicate of the certificate in the office of the department shall be canceled, and the land under the certificate shall revert to and become the property of the state to the same extent as other state lands and shall be open to lease and sale.

(3) All buildings, fences, and other improvements placed thereon subsequent to the date of execution of the certificate of purchase shall be and remain the property of the purchaser named in the certificate of purchase or of his heirs, assigns, or devisees and may be removed from the land at any time within 90 days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the 90-day period, they become the property of the state.

(4) In case of cancellation of certificate of purchase or surrender of certificate of purchase and where the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate or at the rate set by competitive bidding if such occurs.

History: En. Sec. 88, Ch. 60, L. 1927; re-en. Sec. 1805.88, R.C.M. 1935; amd. Sec. 4, Ch. 141, L. 1939; amd. Sec. 1, Ch. 159, L. 1951; amd. Sec. 64, Ch. 428, L. 1973; R.C.M. 1947, 81-924.

Cross-References

Land foreclosed by Board of Investments not state land, 77-1-101.

Court actions for money due on cancellation of certificates, 77-1-111.

Sale of land under execution, 77-2-315.

Subsequent purchaser may take subject to liens, 77-2-336.

77-2-333. Reinstatement of canceled certificates of purchase. (1) In all cases where a certificate of purchase of state lands has been canceled and annulled as provided by law and the lands under such certificate have not been resold to another purchaser, the board may in its discretion reinstate the canceled certificate upon:

(a) proper application made in writing by the original purchaser or his heirs, assigns, or devisees, filed within 1 year and 6 months from such cancellation;

(b) payment of all delinquent installments of principal and interest on the certificate, together with penalty interest at the rate of 6% per annum upon all such delinquent installments from the date due until the date of actual payment; and

(c) the furnishing of proof from the county treasurer showing that there are no tax liens against the land.

(2) This reinstatement shall not have the effect of canceling any lease that the state may have issued on the land or affecting any of the provisions of said lease.

History: **En. Sec. 89, Ch. 60, L. 1927; amd. Sec. 1, Ch. 101, L. 1929; re-en. Sec. 1805.89, R.C.M. 1935; R.C.M. 1947, 81-925.**

77-2-334. Assignment of certificate. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared his intention to become a citizen or to a corporation organized under the laws of this state. Such assignments shall be made on forms prescribed by the department, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one copy to be filed and retained in the office of the department and one copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one section. The assignee must in all respects possess the same qualifications as an original purchaser.

History: **En. Sec. 90, Ch. 60, L. 1927; re-en. Sec. 1805.90, R.C.M. 1935; amd. Sec. 65, Ch. 428, L. 1973; R.C.M. 1947, 81-926.**

Cross-References

Limitation on acreage, 77-2-307.

Certificate of purchase voidable for default, 77-2-332.

Subsequent purchaser may take subject to liens, 77-2-336.

77-2-335. Lost certificate. If a certificate of purchase to state lands is lost or is wrongfully withheld by any person from the owner thereof, the rightful owner may apply to the board for the issuance of a substitute certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue.

History: **En. Sec. 91, Ch. 60, L. 1927; re-en. Sec. 1805.91, R.C.M. 1935; amd. Sec. 66, Ch. 428, L. 1973; R.C.M. 1947, 81-927.**

77-2-336. Lien on improvements and crops for amount due state. (1) The state has a lien prior and superior to all other liens, except threshermen's liens and seed liens as specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due, and other charges, as evidenced by the original loan contract and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and all other improvements upon the lands so sold and upon all crops growing upon any of these lands and also upon such crops after they have been separated from the lands for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is hereby expressly reserved.

(2) Any person purchasing or otherwise acquiring the improvements or crops or any part thereof takes them subject to the lien.

(3) Any representative of the department or the sheriff of the county in which the land is located or his deputy may demand of the purchaser or his agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or any representative of the department may immediately seize the improvements and crops, and upon giving 3 days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale.

History: En. Sec. 81, Ch. 60, L. 1927; re-en. Sec. 1805.81, R.C.M. 1935; amd. Sec. 60, Ch. 428, L. 1973; R.C.M. 1947, 81-917.

Cross-References

Sale on execution of judgment, Title 25, ch. 13, part 7.

Liens — generally, Title 71, ch. 3, part 1.

Farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Lien for hail insurance, 71-3-711.

Lien for spraying or dusting crops, 71-3-904.

77-2-337. Disposition of sale proceeds. (1) The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof.

(2) All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(4).

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341.

Nonexpendable trust fund type — public school fund, 20-9-601.

Land foreclosed by Board of Investments not state land, 77-1-101.

Board subject to authority of Board of Investments, 77-1-202.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-2-338 through 77-2-340 reserved.

77-2-341. Patents. When the purchase price has been paid in full together with interest according to the certificate, the owner thereof shall be entitled to receive a patent for the land under such certificate.

History: En. Sec. 95, Ch. 60, L. 1927; re-en. Sec. 1805.95, R.C.M. 1935; R.C.M. 1947, 81-931.

77-2-342. Execution of patents. (1) The governor and, in the governor's absence or inability, the lieutenant governor shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made for the land.

(2) The deed or patent must be attested by the secretary of state, must be countersigned by the director of the department, and must have the great seal

of the state and the seal of the board attached to the deed or patent but need not be acknowledged.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part); amd. Sec. 322, Ch. 418, L. 1995.

Cross-References

Governor executing patents, 2-15-201.

Execution of deeds — foreclosure of investment, 17-6-201(5).

77-2-343. Patent provisions. (1) Such deed or patent shall contain the reservation of easements for rights-of-way to the United States, reservation of all minerals in the land as provided in 77-2-304, and all other reservations to which the particular land conveyed is subject.

(2) If the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project.

(3) This section does not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued. The statutes in effect when such certificate of purchase was issued must govern.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part); amd. Sec. 3, Ch. 157, L. 1981.

Cross-References

Irrigation districts — liens and charges, 77-2-315.

77-2-344. Copy of deed or patent as evidence. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part).

77-2-345. Limitation for cancellation of patent. No action shall be brought to vacate or cancel any patent issued by the state after the expiration of 2 years from the date of such patent except upon the ground of fraud.

History: En. Sec. 97, Ch. 60, L. 1927; re-en. Sec. 1805.97, R.C.M. 1935; R.C.M. 1947, 81-933.

Cross-References

Fraud — actual and constructive, 28-2-404 through 28-2-406.

77-2-346 through 77-2-350 reserved.

77-2-351. Sale to or exchange of property with public entity. Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land or for other consideration with another public entity on terms and in a manner that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. In the case of land that is not granted to or held by the state in trust for the support of the common schools, for a state institution, or for another specific purpose, the board may accept as partial or total consideration for the transfer of the land a binding commitment by the transferee to use the property to provide a community service or a benefit that fulfills a public purpose. The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given. As used in this section, "public entity" means any county, city, municipal corporation, school district, or special improvement or taxing district.

History: En. Sec. 1, Ch. 264, L. 1991; amd. Sec. 1, Ch. 272, L. 1995.

Part 4

Transfer of Federal Land or Easements

77-2-401. Sale or transfer of federal land — when hearing required. (1) Prior to the sale or transfer of land in the state that is owned or controlled by an agency of the United States government, the director of the department shall determine whether there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit because of the sale or transfer.

(2) If the director determines under subsection (1) that there would be an adverse impact and that a hearing or public meeting has not been or will not be conducted by a federal agency to provide an opportunity for expression of public opinion regarding the proposed sale or transfer and that further public input would be desirable, the director shall hold a public hearing prior to the sale or transfer in order to provide the opportunity for the expression of public sentiment regarding the proposed disposition of federal land.

(3) If a hearing will be conducted by a federal agency on the proposed sale or transfer of federal land within the state, the director shall require the attendance of a representative of the department for the purposes of fulfilling the requirements of 77-2-403.

(4) The sale or transfer of easements by an agency of the United States government and the transfer of land by the United States to the state of Montana in satisfaction of land owed to the state pursuant to The Enabling Act are exempt from the operation of this section.

History: En. Sec. 1, Ch. 670, L. 1983; amd. Sec. 323, Ch. 418, L. 1995.

77-2-402. Hearing requirements. Any hearing required under 77-2-401 must be held in a county in which the land involved in the proposed sale or transfer is located and must be held according to procedural rules that must be adopted by the director of the department in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 2, Ch. 670, L. 1983; amd. Sec. 285, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 near end substituted "director of the department" for "commissioner"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

77-2-403. Action by director. The director of the department shall take action that the director considers appropriate, consistent with federal jurisdiction, to address concerns and issues raised during the hearing. The action may include but is not limited to:

(1) the filing of formal requests for action by the appropriate federal agency that would alleviate concerns expressed at the hearing;

(2) the filing of a formal protest to the proposed sale or transfer.

History: En. Sec. 3, Ch. 670, L. 1983; amd. Sec. 286, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in introduction substituted "director of the department" for "commissioner"; and made minor changes in style. Amendment effective March 12, 1997.

CHAPTER 3

ROCK, MINERAL, COAL, OIL, AND GAS RESOURCES

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Part 1

Prospecting Permits and Mining Leases

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Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Minerals, Oil, and Gas, Title 82.

Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-101. Definitions. In this part the following definitions apply:

(1) "Full market value" means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

(2) "Gems" means sapphires, rubies, and other stones commonly known as "precious stones" or "semiprecious stones", but does not mean stones or other earth materials commonly used in building or construction work.

(3) "Metalliferous minerals" means gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals.

(4) "Mining" means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals or gems and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals or gems.

(5) "Mining lease" means a lease issued by the board for the prospecting for or mining of metalliferous minerals or gems.

(6) "Mining lessee" means the holder of a mining lease whether the holder is the original lessee under the lease or holds the lease as successor of the original lessee.

(7) "Returns" means the net amount received by the shipper from products of mining operations after deducting transportation costs, smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

History: En. Sec. 1, Ch. 148, L. 1937; amd. Sec. 35, Ch. 428, L. 1973; R.C.M. 1947, 81-601.

77-3-102. Mining leases authorized. (1) The board may, in its discretion, subject to the other provisions of this part, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation, for the purpose of prospecting for or mining metalliferous minerals or gems.

(2) These leases may be for a period of time determined by the board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased.

(3) Leases issued under this part shall give the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases.

(4) In short the board in making the leases may exercise business discretion, so long as this part is not violated.

History: (1), (2)En. Sec. 2, Ch. 148, L. 1937; amd. Sec. 36, Ch. 428, L. 1973; Sec. 81-602, R.C.M. 1947; (3),(4)En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; Sec. 81-603, R.C.M. 1947; R.C.M. 1947, 81-602, 81-603(part).

Cross-References

Authority to lease, Art. X, sec. 4, Mont. Const.; 77-1-204.

Leases for production of minerals for term of years as provided by Legislature, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Eminent domain — available when surface rights in others, except for strip or open-pit mining, 70-30-102.

Powers and duties of Board, 77-1-202.

Purchaser of state land takes subject to state mineral rights, 77-2-304.

Sales, contracts for sale, and other leases subject to mining leases, 77-3-122.

Leasing preference to prospecting permittee, 77-3-132.

Release of record upon forfeiture of lease — penalty, 82-1-201.

Uranium mining permit required, 82-4-221.

Mine operating permit required, 82-4-335.

77-3-103. Prospecting permits authorized. Prospecting permits without lease may be issued by the board upon the payment of the issuance fee under 77-1-302. The permittee shall also pay an annual fee established by the department and approved by the board at the end of each year during the life of the permit. A permit shall provide for due diligence in the work of prospecting during the life of the permit.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

Cross-References

Geophysical exploration — permits required, 82-1-101.

Exploration license required, 82-4-331.

77-3-104. Notice of lease or permit approval. Upon the approval of an application for a prospecting permit or a mining lease under this part, the department shall promptly give written notice, by ordinary mail, to the lessee or permittee and to any holder of an agricultural or grazing lease embracing the same land or to any holder of a certificate of purchase or patent embracing the same land. The notice shall be addressed to the permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post-office address.

History: En. Sec. 16, Ch. 148, L. 1937; amd. Sec. 48, Ch. 428, L. 1973; R.C.M. 1947, 81-616.

77-3-105. Assignment of leases or permits. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing the assignment is not relieved of any responsibility for operations under the lease or prospecting permit until:

(1) the financial and moral responsibility of the assignee has been approved by the board; and

(2) there is deposited with the department:

(a) the assignment or an executed copy thereof;

(b) an instrument executed by the sureties upon any bonds then held by the board in connection with the mining lease or permit and then in force, consenting to the assignment and containing the agreement of the sureties to be bound by the bonds under the assignment or new bonds conforming to all the requirements of 77-3-119; and

(c) a fee prescribed under 77-1-302.

History: **En. Sec. 13, Ch. 148, L. 1937; amd. Sec. 8, Ch. 22, L. 1971; amd. Sec. 45, Ch. 428, L. 1973; R.C.M. 1947, 81-613.**

77-3-106. Disposition of royalties, fees, and penalties. All fees and penalties collected under this part shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the land belongs; and all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land belongs under each particular permit or lease; provided, however, that all rentals and royalties received from "mortgage lands" shall be credited to the same fund or funds as other receipts from such lands and that all rentals and royalties received under or in connection with a lease or permit on other lands or mineral rights not acquired through any grant to the state of Montana from the United States shall be paid into the same funds into which such receipts are paid when the land is part of the grant for the benefit of the public schools of the state of Montana.

History: **En. Sec. 17, Ch. 148, L. 1937; R.C.M. 1947, 81-617.**

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-3-107 through 77-3-110 reserved.

77-3-111. Applications for mining lease. Application for a mining lease shall be made to the department on a form prescribed by it.

History: **En. Sec. 6, Ch. 148, L. 1937; amd. Sec. 7, Ch. 22, L. 1971; amd. Sec. 40, Ch. 428, L. 1973; R.C.M. 1947, 81-606.**

77-3-112. Examination of lands prior to leasing. (1) Before the board leases any lands for the mining of metalliferous metals or gems, the department shall investigate the character of the lands and the nature and possible extent of the mineral deposits therein for the purpose of determining whether those lands are of such a character as to warrant the issuance of a mining lease thereon and for the purpose of determining the amount of royalty and other rentals or considerations for which the lands should be leased for mining purposes under this part.

(2) Upon the filing of an application for a mining lease the board may, if the lands covered by the application have not been examined by the department, require the applicant for the lease to deposit with the department an amount of money, not exceeding $500 in any one case, which in its judgment will cover the cost of a special examination to enable the board to pass upon the application in accordance with this part. Such deposit shall be used to reimburse the state for the actual cost of the examination, and any portion of

the deposit not required for such reimbursement shall, upon the approval or rejection of the application, be repaid to the applicant by the department.

(3) The department shall make and preserve complete records of all such examinations.

History: **En. Sec. 11, Ch. 148, L. 1937; amd. Sec. 43, Ch. 428, L. 1973; R.C.M. 1947, 81-611.**

77-3-113. Quantity of lands covered by lease. A mining lease shall cover the quantity of ground the board determines to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which the lands are to be mined, and the character and size of the operation contemplated, necessary, or reasonable in good mining practice for the profitable recovery of the metalliferous minerals or gems therefrom.

History: **En. Sec. 5, Ch. 148, L. 1937; amd. Sec. 39, Ch. 428, L. 1973; R.C.M. 1947, 81-605.**

77-3-114. Restrictions on mining leases on lands already subject to coal, oil, or gas lease. In the case of lands covered by a lease for the mining of coal, oil, or gas, no lease for the mining upon any such land for metalliferous minerals and/or gems shall be issued to any person, association of persons, or corporation, other than the holder of such coal, oil, or gas lease while such coal, oil, or gas lease is in force, except with the written consent of the holder of such coal, oil, or gas lease.

History: **En. Sec. 10, Ch. 148, L. 1937; R.C.M. 1947, 81-610.**

77-3-115. Lease provisions. (1) A lease may contain reasonable provisions for preliminary prospecting periods and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any) and for the prosecution of mining after the prospecting period.

(2) It may provide for the payment of rentals in conjunction with the work requirements or may prescribe cash rentals as an alternative or otherwise as the board considers best.

(3) It shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by him in the event of the termination of the lease by forfeiture or by lapse of time.

(4) It may also contain other provisions the board and the lessee agree upon, not inconsistent with this part.

History: **En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).**

77-3-116. Royalty provisions. In every mining lease the board shall reserve to the state a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value as ascertained by the board of the leasehold interest conveyed by the lease. This royalty may not be less than 5% of the returns from or of the full market value of the metalliferous minerals or gems recovered by the lessee from the state lands or reserved mineral rights covered by the lease.

History: **En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(1).**

Cross-References

Full market value required, Art. X, sec. 11, Mont. Const.

Royalty in pooling agreements, 77-3-121.

77-3-117. Modification of lease provisions. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it considers best, amend or modify the terms and conditions within the limitations of this part or extend the term of any lease or prospecting permit issued under this part, subject to the limitations contained in 77-3-102(1) and (2).

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-118. Restrictions on removal of minerals and gems during preliminary prospecting period. No mining lessee may, during any preliminary prospecting period contained in any lease, remove any metalliferous minerals or gems from the leased premises, except as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-119. Bonds to state. The board may, at the time of the execution and delivery of a mining lease or at any time during the life of the lease, require a mining lessee to file with the department, for the benefit of the state, a bond or bonds conditioned to protect the rights of the state, particularly in the payment to the proper officer of the state of the royalties reserved in the mining lease. The bond or bonds shall be in a form and amount prescribed by the board. The board may at any time require new or additional bonds if in its discretion the interests of the state are not adequately protected by the bond or bonds previously filed.

History: En. Sec. 7, Ch. 148, L. 1937; amd. Sec. 41, Ch. 428, L. 1973; R.C.M. 1947, 81-607.

Cross-References

Bonds — who may issue — sureties, 33-26-101.

77-3-120. Bonds to protect prior purchasers, lessees, or contractees. (1) If the lands at the time of the issuance of a mining lease have been sold, are under contract of sale, or have been leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of the prior purchaser, contractee, or lessee and among other things may at any time require the mining lessee to file with the department a corporate surety bond in a reasonable amount fixed by the board, conditioned to protect the rights of the prior purchaser, contractee, or lessee.

(2) The form of the bond shall be prescribed by the board, and the bond shall run to the state for the benefit of the prior purchaser, contractee, or lessee. New or additional bonds may be required by the board at any time.

(3) Suit may be brought upon the bond by any such prior purchaser, contractee, or lessee for alleged violation of the terms of the bond by the mining lessee. Such suit shall be brought by the claimant in the name of the state for the use and benefit of the claimant, and any recovery upon the bond shall be paid to the claimant.

History: En. Sec. 8, Ch. 148, L. 1937; amd. Sec. 42, Ch. 428, L. 1973; R.C.M. 1947, 81-608.

Cross-References

Action for use and benefit of another in name of state, Rule 17(a), M.R.Civ.P. (see Title 25, ch. 20).

Guaranty, indemnity, and suretyship — generally, Title 28, ch. 11.

Surety — corporate bonds — who may issue, 33-26-101.

77-3-121. Pooling agreements and unit plans of operation. (1) The board may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights and partly on land in which others hold the mining rights.

(2) From each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state is entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from lands included in the agreement in which the state holds the mining rights bears to the total yardage or area mined and included in the cleanup.

(3) The board may also enter into agreements for the unit operation of such placer mining deposits and the apportionment of royalties upon any other equitable basis the board considers in the best interest of the state. The agreements may not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease or to a smaller percentage than the 5% minimum under 77-3-116.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(2).

77-3-122. Sales, contracts for sale, and other leases subject to mining leases. Any sale of state lands, any contract for the sale of state lands, and any lease of state lands made or issued by said board during the life of any mining lease issued under the provisions of this part shall be subject to such mining lease during the life thereof, and no bond shall be required of such mining lessee for the protection of any such purchaser, contractee, or other lessee unless provision therefor shall be made in such mining lease.

History: En. Sec. 9, Ch. 148, L. 1937; R.C.M. 1947, 81-609.

77-3-123. Failure of title. In issuing mining leases, the board and the state have leased only such right, title, and interest as the state has in the lands, metalliferous minerals, or gems therein contained. Neither the state, the board, nor any representative, agent, or employee of the state or the board are under any liability for the failure of the title of the state, in whole or in part, to the lands, metalliferous minerals, or gems covered by the lease.

History: En. Sec. 12, Ch. 148, L. 1937; amd. Sec. 44, Ch. 428, L. 1973; R.C.M. 1947, 81-612.

77-3-124 through 77-3-129 reserved.

77-3-130. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from a mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the mining lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: **En. Sec. 1, Ch. 105, L. 1989.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

77-3-131. Limitations on prospecting permits. A permit shall be limited to prospecting for metalliferous minerals or gems and no permittee may remove from any lands or mineral rights covered by the permit any metalliferous minerals or gems except such as are necessary for the proper testing and sampling of the lands or mineral rights and except as are permitted by the board.

History: **En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).**

77-3-132. Leasing privileges of permittee. (1) During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it shall be in the form and subject to all the terms and conditions specified in this part, as in the case of a mining lease issued under this part. The permittee has the preference right to a lease, upon such terms as the board considers just, subject to this part, and in any event the permittee has preference without competitive bidding and upon the most favorable terms permitted under this part to 40 contiguous acres.

(2) If some other person makes a better bid for a mining lease upon the land covered by the permit and if the board awards a mining lease to a better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the permittee has performed upon the land under his permit in connection with his prospecting and exploration work. Within 30 days from the date the board gives the permittee notice of the issuance of the mining lease or within such further time as the board upon good cause shown allows, the permittee may remove from the land any machinery, equipment, improvements, and other property placed thereon by him.

History: **En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).**

Part 2

Nonmetallic Minerals, Excluding Coal, Oil, and Gas

77-3-201. Nonmetallic mineral leases authorized. When there are found upon state lands deposits of stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the board may in its discretion issue permits or leases to private persons for the removal and disposition of the above-named deposits upon such terms and conditions as the board may determine.

History: **En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).**

Cross-References

Authorization, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

Eminent domain — surface rights rest in others, except for strip or open-pit mining, 70-30-102.

Mining permit required, 82-4-221.

Opencut, nonmetallic mining reclamation, Title 82, ch. 4, part 4.

Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-202. Fee. The fee for issuing the lease is the same as for an oil and gas lease.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-203. Duration of lease. No such lease shall be made for a longer term than 10 years.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

Cross-References

Leases for production of minerals — term of years as provided by Legislature, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-3-204. Royalty provisions. (1) All such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands. The gross value shall be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances or as in the determination of the board is fair and reasonable.

(2) The board may demand a cash deposit to guarantee the payment of the royalties, a surety bond, or both a cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

Cross-References

Powers and duties of Board, 77-1-202.

77-3-205. Report of lessee and payment of royalty. (1) On or before the last day of each month, every holder of a producing lease under this part shall make a report to the department on a form the department prescribes showing:

(a) the amount of substances mined or extracted from the lands in the preceding month;

(b) the price obtained;

(c) the total amount of sales; and

(d) any additional information required.

(2) The report shall be verified by affidavit of the lessee or some responsible person having knowledge of the facts and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

77-3-206. Disposition of royalties, fees, and penalties. The royalties, fees, and penalties received under these leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

Disposition of royalties and other money collected under oil and gas leases — credited to general fund unless otherwise disposed of, 77-3-436.

77-3-207. Land leased for other purposes. Such portions of the section or other subdivision of the land on which such deposits are located as are not needed for the quarrying or digging and removal of the stone, limestone, oil shale, clay, sand, or gravel may be leased for grazing or agricultural purposes the same as other state lands. In the case that grazing or agricultural leases are issued they shall provide for a right-of-way across the land for the removal of the stone, limestone, oil shale, clay, gravel, sand, or other deposits, but the rights of the lessee shall also be duly protected.

History: En. Sec. 54, Ch. 60, L. 1927; re-en. Sec. 1805.54, R.C.M. 1935; R.C.M. 1947, 81-703.

Cross-References

State grant of easements, Title 77, ch. 2, part 1.

77-3-208. Stone, gravel, and sand permits for public use. (1) The board may in its discretion issue permits upon such terms and conditions it determines to the department of transportation, the board of county commissioners of any county of the state, or to the governing body of a city or town and of any other political subdivision of the state granting them the right to take, remove, and use stone, gravel, or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance, and improvement of public roads, highways, bridges, streets, or alleys.

(2) The rights of lessees to the lands on which such stone, gravel, or sand may be located shall be properly safeguarded under the terms of the permits.

History: En. Sec. 55, Ch. 60, L. 1927; re-en. Sec. 1805.55, R.C.M. 1935; amd. Sec. 51, Ch. 428, L. 1973; R.C.M. 1947, 81-704; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Sale under certificate of purchase, 77-2-327.

77-3-209 and 77-3-210 reserved.

77-3-211. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from a lessee under this part if the information relates to the geology of the mining lease. The withholding is effective for as long as the department considers it necessary either to protect the lessee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 2, Ch. 105, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Part 3
Coal

Part Cross-References

New Coal Production Incentive Tax Credit Act of 1985, Title 15, ch. 35, part 2.

Educational impact statement, 20-1-208.

Safety in coal mines, Title 50, ch. 73.

Preference given to coal lessees in obtaining mining leases, 77-3-114.

Reclamation, Title 82, ch. 4.

Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-301. Coal leases authorized. The board may lease in such manner as it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated and subject to such rules as the board prescribes.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

Cross-References

Authority to grant leases, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

Eminent domain — not available for coal mining in certain cases, 70-30-106.

Mineral reservations in state lands, 77-2-304.

Geophysical exploration — permits required, 82-1-101.

Coal mine-site location permit, 82-4-122.

Mining permit required, 82-4-221.

77-3-302. Lands subject to coal leasing. The authority to lease extends to state lands no matter how acquired and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

Cross-References

Certificates of purchase, 77-2-327.

Patents, 77-2-341.

77-3-303. Rules relating to coal leasing. The board shall have the power and authority to prescribe such additional rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state land for coal mining purposes.

History: En. Sec. 44, Ch. 60, L. 1927; re-en. Sec. 1805.44, R.C.M. 1935; R.C.M. 1947, 81-507.

Cross-References

Full market value for interest in public lands, Art. X, sec. 11, Mont. Const.

Lease for production of hydrocarbons, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-3-304. Protection of rights of purchasers or prior lessees. Whenever the leased lands are under certificate of purchase or patents have been issued and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

History: **En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).**

Cross-References

Eminent domain — not available for coal mining in certain cases, 70-30-106.

Mineral rights reserved to state upon sale, 77-2-304.

Certificate of purchase, 77-2-327.

Patents, 77-2-341.

77-3-305. Limitations on leasing. The board shall not issue leases:

(1) to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless such country provides for similar or like privileges to citizens of the United States; or

(2) if, after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future.

History: **En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part); amd. Sec. 1, Ch. 127, L. 1983.**

77-3-306. Conditions on manner of mining. (1) Every coal lease shall be conditioned upon compliance with Title 82, chapter 4, parts 1 and 2.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease after a hearing before the board.

History: **En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).**

77-3-307. Improvements of former lessee. (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition shall be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them or as fixed by the aforesaid officers or officer or that he has tendered payment as so fixed or that the owner desires to remove his improvements.

History: **En. Sec. 43, Ch. 60, L. 1927; re-en. Sec. 1805.43, R.C.M. 1935; amd. Sec. 32, Ch. 428, L. 1973; R.C.M. 1947, 81-506.**

77-3-308. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from a coal mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 3, Ch. 105, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

77-3-309 and 77-3-310 reserved.

77-3-311. Form of lease. The board shall prescribe the form of the lease.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-312. Leasing procedures. Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on such evaluation. Leases shall be awarded by a competitive bid system, including a bonus bid for the first year's rental, and no lease shall be awarded at less than fair market value.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

Cross-References

Fair market value for disposition of interest in state lands required, Art. X, sec. 11, Mont. Const.

77-3-313. Bond requirements. The board shall also demand a surety company bond in such form and amount as it may determine, conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; but a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the board make the furnishing of a bond unnecessary.

History: En. Sec. 42, Ch. 60, L. 1927; re-en. Sec. 1805.42, R.C.M. 1935; R.C.M. 1947, 81-505.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Corporations as sureties, 33-26-101.

77-3-314. Duration of lease. (1) Coal mining leases shall be issued for a primary term of 10 years and so long thereafter as coal is produced from such lands in commercial quantities.

(2) A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine-site location permit under 82-4-122 prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

(3) For the purpose of this part, "commercial quantities" means that quantity of coal which can be sold at profit in the commercial market.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-315. Repealed. Sec. 2, Ch. 538, L. 1981.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases shall be upon a rental and royalty basis and shall be fixed and determined by the board.

(2) The rental and royalty terms of each lease shall be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental shall be on a per acre basis but in no case shall it be less than $2 per acre.

(4) The amount of such royalty shall be based upon the kind, grade, and character of the coal in each particular mine; upon the size, shape, and nature of the coal vein, strata, or body; and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than 10% of the f.o.b. mine price of a ton prepared for shipment.

History: (1), (3), (4)En. Sec. 40, Ch. 60, L. 1927; re-en. Sec. 1805.40, R.C.M. 1935; amd. Sec. 3, Ch. 358, L. 1975; Sec. 81-503, R.C.M. 1947; (2)En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; Sec. 81-502, R.C.M. 1947; R.C.M. 1947, 81-502(part), 81-503.

77-3-317. Report and payment of royalty. (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

(a) the number of tons mined during the preceding calendar month;

(b) the price obtained therefor at the mine;

(c) the total amount of all sales; and

(d) any additional information required by the department.

(2) The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; re-en. Sec. 1805.45, R.C.M. 1935; amd. Sec. 33, Ch. 428, L. 1973; R.C.M. 1947, 81-508.

77-3-318. Disposition of royalties and other receipts. All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

(1) All fees shall be credited to the state general fund.

(2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

History: En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-3-319 and 77-3-320 reserved.

77-3-321. Coal mining permits for private use and for schools. (1) The board may in its discretion grant to any resident of this state a permit for a term of not more than 1 year to mine coal for the use of himself and his family from any coal deposit belonging to the state and not under lease upon payment to the state of the flat sum of $5 as a royalty for any amount of coal mined by him not exceeding 30 tons of 2,000 pounds.

(2) The board may also grant a similar 1-year permit to the board of trustees of any school district in this state, provided that if such school district requires more than 30 tons of coal per annum, then any additional amount required shall be paid for in advance at the rate of 12 1/2 cents per ton.

(3) Applications for such permits shall be accompanied by an affidavit to the effect that the coal is not wanted for sale or disposal to other parties but that it is wanted for the use of the applicant and his family or for the use of the school district, as the case may be.

(4) The granting of such permits shall not prevent the board from issuing the usual coal mining leases on the land from which the coal under such permit is to be taken. In cases of this kind the permittee shall remove the quantity of coal to which he is entitled as expeditiously as possible and his rights under the permit shall then automatically cease upon the issue of the lease.

History: En. Sec. 46, Ch. 60, L. 1927; re-en. Sec. 1805.46, R.C.M. 1935; R.C.M. 1947, 81-509.

Cross-References

Term "school district" includes community college districts, 20-15-403.

Free permit to remove timber for residents to use as fuel and for domestic purposes, 77-5-211.

Timber permits for farm and ranch repair and development, 77-5-213.

Part 4

Oil and Gas

Part Cross-References

Down-hole equipment exempt from taxation, 15-6-213.

Laborers' liens on oil and gas wells and pipelines, Title 71, ch. 3, part 10.

Oil or gas well drilling permits — environmental impact statements, 75-1-201.

Consent of oil and gas lessees required for other mining lease, 77-3-114.

Release of record upon forfeiture of lease — penalty, 82-1-201.

Oil and gas — general provisions, Title 82, ch. 10.

Surface damage and disruption payments — penalty for late payment, 82-10-504.

Oil and gas conservation, Title 82, ch. 11.

Emergencies — notice and hearing, 82-11-151.

Oil and gas production damage mitigation account, 82-11-161.

Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-401. Oil and gas leases authorized. (1) The board is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with The Enabling Act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing, and removing the same upon the terms and conditions herein prescribed to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state.

(2) This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state; but in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

Cross-References

Authorization to permit leasing, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

Reservation of mineral rights to state, 77-2-304.

Geophysical exploration — permits required, 82-1-105.

Authorization of oil and gas leasing by local governments, Title 82, ch. 10, part 2.

Notice of intention to drill or conduct seismic operations, 82-11-122.

77-3-402. Rules. (1) The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development. The board shall formulate rules not inconsistent with law governing the leasing of state lands for oil and gas exploration and development which shall be compiled and printed periodically.

(2) Copies of the rules and notices of changes therein shall be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board.

History: En. Sec. 7, Ch. 108, L. 1927; re-en. Sec. 1882.7, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1961; R.C.M. 1947, 81-1707.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

77-3-403. Hearings on questions related to leases. The board is hereby granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases under such rules as it may adopt.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

77-3-404. Limitation on area under single lease. An oil or gas lease issued on state lands may not embrace more than 640 acres, except that any section surveyed by the United States which contains more than 640 acres may be included under one lease.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-405. Leased lands to be generally compact and contiguous. (1) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit.

(2) No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than 1 square mile.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(3).

77-3-406. Number of leases which one person may hold. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment or succession, will, judgment, decree, or otherwise through the operation of law more than one oil and gas lease to state lands, subject to such regulations and limitations as the board prescribes.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-407. New leases on lands leased prior to February 28, 1953. (1) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is being produced, the board shall at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction on the terms then existing for such leasing. Any person, association, firm, or corporation who held such lease at the expiration thereof shall have the privilege of re-leasing the same at such highest responsible bid offered therefor upon such terms and conditions as may be prescribed by the board or the legislature.

(2) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is not being produced, the board may at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction if in the judgment of the board such advertising and public auction will result in leasing of the land on terms advantageous to the state.

History: En. Sec. 15, Ch. 108, L. 1927; amd. Sec. 3, Ch. 171, L. 1933; re-en. Sec. 1882.15, R.C.M. 1935; amd. Sec. 1, Ch. 104, L. 1965; R.C.M. 1947, 81-1715.

77-3-408. Certain state officers not to be interested in leases. It is unlawful for any officer or employee of any agency of the executive branch of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927; amd. Sec. 4, Ch. 171, L. 1933; re-en. Sec. 1882.20, R.C.M. 1935; amd. Sec. 93, Ch. 428, L. 1973; R.C.M. 1947, 81-1720.

Cross-References

Public officers not to have interest in contracts, 2-2-201.

Official misconduct, 45-7-401.

77-3-409. Misconduct of officers in relation to oil and gas leases. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this part or for modifying the performance thereof shall be guilty of a felony.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or interest of the state therein or of any oil and gas deposits in which the state is interested or who knowingly and willfully makes any false report of any such classification or appraisal shall be guilty of a felony.

History: En. Sec. 21, Ch. 108, L. 1927; re-en. Sec. 1882.21, R.C.M. 1935; R.C.M. 1947, 81-1721.

Cross-References

Public employee standards of conduct, Title 2, ch. 2.

Jurisdiction relating to felony, 45-1-201.

Felony defined, 45-2-101.

Bribery, 45-7-101.

Official misconduct, 45-7-401.

Felony — when no penalty specified, 46-18-213.

77-3-410. False statements relating to oil and gas leases. Any person who shall knowingly make and file in any department, bureau, or office of the state any application, statement, or report in writing required by regulation promulgated pursuant to the provisions of this part containing any false statement of a material fact shall be guilty of a felony.

History: En. Sec. 22, Ch. 108, L. 1927; re-en. Sec. 1882.22. R.C.M. 1935; R.C.M. 1947, 81-1722.

Cross-References

False swearing — misdemeanor, 45-7-202.

Unsworn falsification to authorities — misdemeanor, 45-7-203.

77-3-411 through 77-3-420 reserved.

77-3-421. Duration of lease. (1) All state oil and gas leases entered by the board shall be granted for a primary term of not more than 10 years or less than 5 years and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other obligations are fully kept and performed by the lessee. However, leases for a period of less than 5 years may be issued if the board determines that such shorter term is necessary to ensure full compensation for the oil and gas resource.

(2) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement are considered to be produced from the state lands therein within the meaning of this part.

(3) The board may grant reasonable extensions of the primary term of a state oil or gas lease upon a showing that the lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating the lease or is threatened with substantial economic loss, due to litigation regarding the lease or another lease in the immediate area held by the same lessee, state compliance with the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, rules adopted under Title 75, chapter 1, or adverse conditions caused by natural occurrences.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84,

Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part); amd. Sec. 1, Ch. 165, L. 1983; amd. Sec. 1, Ch. 272, L. 1989.

Cross-References

Term of years as provided by Legislature for oil and gas lease, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Pooling agreements, 77-3-430.

77-3-422. Lease extension clause. If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-423. Annual rental. (1) The annual money rentals to be paid to the state for oil and gas leases must be set by the board but may not be less than $1.50 for each acre of land leased.

(2) In addition to the sum of $1.50 per acre, the rental for the first year of the lease must also include any sum in excess of $1.50 per acre offered and accepted for the first year's rental.

(3) The annual rental under this section may not be less than $100 a year.

(4) The first year's rental must be paid before the issuance of the lease. The rentals for each subsequent year of the lease are due and payable before the beginning of the subsequent lease year. Upon failure to make the rental payment, the lease terminates unless there is a well currently being drilled, a producing well, or a shut-in well approved by the department on the lease. Rental paid for any year must be credited against any royalty that accrues during that year.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(1), (2); amd. Sec. 1, Ch. 163, L. 1989; amd. Sec. 1, Ch. 34, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 34 in (1), after "leases", deleted "issued on and after July 1, 1975"; in (4), in third sentence, inserted references to a well currently being drilled and to a shut-in well approved by the Department; and made minor changes in style. Amendment effective February 24, 1997.

Cross-References

Forfeiture and cancellation of leases — hearing, 77-3-440.

77-3-424. Power to terminate lease in absence of commencement of drilling or payment of delay drilling penalty. (1) In every oil and gas lease granted after March 3, 1955, under this part there must be reserved to the board full power to declare termination of the lease at the end of the fifth year or any subsequent year of the primary term of the lease upon failure of the lessee to either:

(a) commence the drilling of a well for oil and gas upon the leased premises; or

(b) pay a delay drilling penalty as follows:

(i) for the sixth year of the lease $1.25 per acre per year; and

(ii) for the remainder of the primary term of the lease an amount per acre per year as the board may in its discretion determine.

(2) Notice of that determination must be given to the lessee, and if the lessee applies for a hearing thereon within 10 days after receipt of the notice, the determination becomes final only after the hearing has been held.

(3) This annual delay drilling penalty must be paid each year in advance. The board shall refund delay drilling penalties paid on a lease for any year in which the lessee commences drilling on that lease.

(4) If a well for oil and gas is commenced, the drilling of the well must be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 9, Ch. 15, L. 1979; amd. Sec. 5, Ch. 163, L. 1989.

Cross-References

Drilling permit — requirement, 82-11-134.

77-3-425. Dry hole clause. If the first well drilled is a dry hole and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes payment of any delay drilling penalties imposed by the board. Upon the resumption of payment of any required delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 2, Ch. 163, L. 1989.

Cross-References

Expenditure of funds from bonds for plugging wells, 82-11-136.

77-3-426. Lessee to prevent waste. Oil and gas leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

Cross-References

Forfeiture and cancellation of leases, 77-3-440.

Oil and gas conservation, Title 82, ch. 10.

77-3-427. Provision for offset wells — compensatory royalties. (1) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill offset wells wherever and whenever necessary to prevent waste and damage to the property of the state.

(2) The board may allow the lessee the following options in lieu of drilling an offset well:

(a) releasing the lands in question; or

(b) paying a compensatory royalty on a nonproducing lease if the board determines that such compensatory royalty will fully compensate the state for waste and damage to the property of the state. The compensatory royalty shall be based upon the estimated drainage, as determined by the board, and shall be paid on a monthly basis unless circumstances require otherwise.

(3) If the board or the lessee terminates the lease, that termination does not impair any implied covenant against drainage or the right of the board to seek damages from the lessee for the lessee's failure to protect the lease from drainage of oil or gas by a well adjacent to the state lease.

History: En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; R.C.M. 1947, 81-1719(part); amd. Sec. 1, Ch. 81, L. 1981; amd. Sec. 3, Ch. 163, L. 1989.

77-3-428. Additional development following completion of productive well. (1) The lessee shall be required, upon completing a commercially productive oil or gas well upon the leased premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive or to such depth as may be necessary to economically test, develop, and operate the deposits discovered.

(2) No lessee shall, however, be required to drill to completion more than one well under any one lease during any one calendar year or a total number of wells under any one lease in excess of the total number of 40-acre subdivisions of land held under such lease. As to lands found valuable for gas production only, the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising 160 acres of land included in the lease, except as the drilling of offset oil or gas wells necessary to protect the leased premises and deposits from loss or depletion due to wells drilled on contiguous lands shall require greater diligence in drilling and a greater number of wells to be drilled.

(3) The performance of said well drilling operations may be suspended only by and with the consent of the board during the time oil or gas previously discovered cannot be marketed at a profit or for other good cause shown.

History: En. Sec. 11, Ch. 108, L. 1927; re-en. Sec. 1882.11, R.C.M. 1935; R.C.M. 1947, 81-1711.

77-3-429. Operating agreements. Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases. No such operating agreements are in any way binding upon the state until filed with the board and approved by it. No such drilling or operating agreement in any way affects the obligations of each individual leaseholder to the state.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(3).

77-3-430. Pooling agreements and unit operations. Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation. However, such agreements may not change the percentage of royalties to be paid to the state from the percentages as fixed in its leases. The board may modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(4).

Cross-References

Duration of lease, 77-3-421.

Delay of drilling — rentals, 77-3-424.

Royalty percentage, 77-3-432.

Unit operations — spacing, pooling, terms, etc., Title 82, ch. 11, part 2.

77-3-431. Report of lessees. (1) On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the price obtained, the total amount of all sales, and any additional information as may be required, and it shall be signed by the lessee or some responsible person having knowledge thereof.

(2) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to make such report of operation, production, and sales in the manner, at the time, and to such representative of the state as may be required by the board.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M. 1947; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part).

Cross-References

Payment of royalty to accompany report, 77-3-435.

77-3-432. Royalty. In each oil and gas lease granted by the state under this part, there must be reserved to the state as consideration for the lease a royalty in all oil and gas produced and saved from all lands covered by the lease and not used for light, fuel, and operation purposes on the leased premises, which must be equivalent to the full market value, as ascertained by the board at the date of the lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under the lease. The royalty reservation must be set by the board but may not be less than 12 ½% on gas and not less than 12 ½% on oil or casinghead gasoline for each producing well for the calendar month. The state may share the expense of transporting the oil to the nearest market on a basis proportional to the state's royalty interest in the oil and at a rate per mile acceptable to the department.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part); amd. Sec. 1, Ch. 136, L. 1987; amd. Sec. 4, Ch. 163, L. 1989; amd. Sec. 2, Ch. 34, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 34 in second sentence, after the second "12 1/2% on", deleted "that portion of the average production of" and after "producing well" deleted "not exceeding

3,000 barrels"; and made minor changes in style. Amendment effective February 24, 1997.

Cross-References

Disposition of royalties and other money, 77-3-436.

Limitation on overriding royalties and payments out of production, 77-3-444.

Obligation to pay royalties as essence of contract — interest, 82-10-103.

77-3-433. Shut-in gas royalty. The royalty on gas, including casinghead gas and all gaseous substances not sold or used off the premises, must be at the rate of $400 per lease each year or the amount of the annual rental provided in the lease, whichever is the greater, payable on or before the annual anniversary date of the lease. As long as the leased lands contain a well capable of production in paying quantities and the requisite payment is made, the lease must be considered as a producing lease under the lease terms.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part); amd. Sec. 3, Ch. 34, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 34 in first sentence, after "$400 per", substituted "lease" for "well" and after "provided in the lease" deleted "in lieu of such per well rate" and in second sentence, after "production", inserted "in paying quantities"; and made minor changes in style. Amendment effective February 24, 1997.

Cross-References

Disposition of royalties, 77-3-436.

77-3-434. Manner of making royalty payment. Such lease shall provide for the rendering of payment of such royalty on all oil and gas produced and saved and sold or used off the premises in the following manner and upon the following terms:

(1) the lessee shall pay to the state in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipeline or storage tank to the credit of the lessee, plus any bonus actually paid or agreed to be paid to the lessee for such oil or gas; or

(2) at the option of the state exercised in writing by the board not oftener than every 30 days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions into the pipeline to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).

77-3-435. Payments due to state — audit — notice — action. (1) The report under 77-3-431 must be accompanied by payment of the amount due the state as royalty for the month covered by the report unless the state's royalty is being or has been paid directly by the purchaser. However, when the amount of royalty due from a lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

(2) Oil and gas leases granted by the state must contain suitable provisions imposing upon all lessees the obligation to make payments due the state in the manner, at the time, and to the representative of the state that may be required by the board.

(3) Except as provided in subsection (4), the department may, within 7 years of the filing of a report pursuant to 77-3-431, commence an audit of a

lessee's or a former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.

(4) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalty is due.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M.; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part); amd. Sec. 4, Ch. 34, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 34 inserted (3) and (4) regarding audit authority of the Department; and made minor changes in style. Amendment effective February 24, 1997.

77-3-436. Disposition of royalties and other money. All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows:

(1) All fees and penalties shall be credited to the state general fund.

(2) All rentals shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income, the same as all other receipts from such lands.

(4) All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state or for any state institution shall be credited to the state general fund unless other disposition is provided by law.

History: En. Sec. 12, Ch. 108, L. 1927; re-en. Sec. 1882.12, R.C.M. 1935; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973; R.C.M. 1947, 81-1712; amd. Sec. 1, Ch. 353, L. 1985.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-3-437. Amendment of existing leases. The owner or owners of any existing state oil and gas lease shall have the right to exchange it for an amended lease containing the same provisions as to the term of said lease as are then provided by law for state oil and gas leases upon filing a written application therefor and upon payment of a sum which is the full market value of the exchange, as determined by the board. The amended lease shall be subject to all other provisions, including rents and royalties, contained in the original lease and shall bear the same commencement date as the original lease.

History: En. Sec. 8, Ch. 108, L. 1927; re-en. Sec. 1882.8, R.C.M. 1935; amd. Sec. 3, Ch. 122, L. 1953; R.C.M. 1947, 81-1708.

77-3-438. Assignments of leases. (1) The assignment of any oil and gas lease issued under this part, either in whole or as to subdivisions of land embracing not less than 40 acres covered thereby, made to an assignee qualified as provided herein is permitted. Such assignment is not, however, binding upon the state until filed with the department and accompanied by the required fees, together with such proof of qualifications required by the board, and approved by the board or its lawful representative. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases is subject to appeal upon proper court proceedings.

(2) All other assignments of oil and gas leases issued under this part or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

History: En. Sec. 16, Ch. 108, L. 1927; re-en. Sec. 1882.16, R.C.M. 1935; amd. Sec. 90, Ch. 428, L. 1973; R.C.M. 1947, 81-1716.

77-3-439. Surrender of leases. The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish the lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not yet accrued as to lands so surrendered and relinquished without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

History: En. Sec. 18, Ch. 108, L. 1927; re-en. Sec. 1882.18, R.C.M. 1935; amd. Sec. 92, Ch. 428, L. 1973; R.C.M. 1947, 81-1718.

77-3-440. Forfeiture and cancellation of leases. (1) All oil and gas leases granted by the state pursuant to the terms of this part shall provide for forfeiture and cancellation thereof upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

(2) Any lessee, upon application therefor, shall be granted a hearing on any notice or demand of the board before any lease is declared forfeited or canceled by the board.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

Cross-References

Release of record upon forfeiture of lease — penalty, 82-1-201.

77-3-441. Restriction on new lease following termination of old lease. In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within 30 days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(4).

77-3-442. Disposition of property of lessee upon termination of lease. (1) Upon the termination for any cause of a lease issued under this part, the former lessee has 6 months after the date of the termination to remove from the premises all machinery, fixtures, improvements, buildings, and equipment belonging to the lessee, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. As to the casing, equipment, and apparatus, any succeeding lessee or, in the event there is no succeeding lessee, the state wishing to have the property left upon the premises shall pay a reasonable value for the property to the former lessee.

(2) If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of the casing, equipment, and apparatus, the succeeding lessee or, if there is no succeeding lessee, the state shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three appraisers, one of whom must be chosen by the successful bidder, one by the former lessee, and the third by the two appraisers chosen. If a person refuses to appoint an appraiser within 15 days of a request to do so by the department, the department may appoint an appraiser for that person. The appraisal must be reported to the respective parties in writing and is final and conclusive.

(3) Unless the department gives written authorization, the former lessee may not remain in possession or manage the land and property formerly covered by the lease. During the time the former lessee remains in authorized possession, the lessee may retain the same share of the products of the premises as inured to the lessee during the term of the lease. If the state or other bidder does not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of the lessee's property from the premises.

History: En. Sec. 17, Ch. 108, L. 1927; re-en. Sec. 1882.17, R.C.M. 1935; amd. Sec. 91, Ch. 428, L. 1973; R.C.M. 1947, 81-1717; amd. Sec. 5, Ch. 34, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 34 in (2), in first sentence after "the succeeding lessee or", inserted "if there is no succeeding lessee" and after "state" deleted "as the case may be" and inserted second sentence regarding departmental appointment of an appraiser; in (3), at beginning of first sentence, inserted "Unless the department gives written authorization", after "may" inserted "not", and at end deleted "until the value of the casing, equipment, and apparatus which the succeeding lessee or the state desires to have left upon the premises is fixed in the manner provided in this section and has been paid to him in cash"; and made minor changes in style. Amendment effective February 24, 1997.

77-3-443. Reservation in lease for disposition of surface. In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

77-3-444. Limitation on overriding royalties and payments out of production. (1) A person, partnership, or association may not enter into an agreement that in the aggregate creates overriding royalties or payments out of the production of oil and gas in excess of 5% above the landowner's royalty payable to the state of Montana unless that agreement expressly provides that the obligation to pay overriding royalties or payments out of production may be suspended by the director of the department at any time upon a determination that the excess overriding royalties or payments out of production constitute a burden on lease operations to the extent that:

(a) proper and timely development may be retarded;

(b) continued operation of the lease may be impaired; or

(c) premature abandonment of the wells may occur.

(2) This section applies separately to any zone or portion of a lease segregated for computing a royalty due to the state of Montana.

(3) All agreements of any kind creating overriding royalties or payments out of production of oil and gas must be filed with the department within 30 days of their creation by the lessee.

History: En. Sec. 1, Ch. 157, L. 1985; amd. Sec. 287, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in introductory clause, substituted "director of the department" for "commissioner"; and made minor changes in style. Amendment effective March 12, 1997.

77-3-445 through 77-3-450 reserved.

77-3-451. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from an oil or gas lessee under this part if the information, including drill logs, seismic data, and lithographic descriptions, relates to the geology of the oil or gas lease. The withholding is effective for as long as the department considers it necessary either to protect the lessee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 4, Ch. 105, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Part 5

Underground Storage of Natural Gas

Part Cross-References

Eminent domain not to prejudice other mineral rights, 70-30-105.

Use of eminent domain to acquire underground gas reservoirs, 82-10-303.

Prohibited activity — injection wells, 82-11-127.

77-3-501. Lease for underground storage of natural gas authorized. (1) The board is hereby authorized and empowered to lease in such manner and upon such terms as it may determine, not inconsistent with The Enabling Act and the constitution, state lands to which the title has vested in the state, subject to existing rights, for use for the underground storage of natural gas upon the terms and conditions herein prescribed, to any natural gas public utility authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.

(2) State lands which may be leased shall include lands in which the deposit of native gas shall have been depleted, provided the lessee pays to the state the amount specified by the board for the native gas then remaining in the lands to be leased.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(1).

Cross-References

Authorizations, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Board authority to lease, 77-1-204.

77-3-502. Rules. The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for the underground storage of natural gas and the sale of the gas remaining in state lands in a gas field wherein native gas deposits have been depleted.

History: En. Sec. 3, Ch. 213, L. 1955; R.C.M. 1947, 81-1727.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

77-3-503. Hearings on questions related to leases. The board may order and hold hearings on any matter or question involving leases issued under 77-3-501 under such rules as it adopts.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-504. Lessee's right to hearing. Any lessee, upon application, is entitled to a hearing on any notice or demand of the department before any lease is granted, forfeited, or canceled by the board.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-505. Bond of lessees. A lessee under 77-3-501 shall furnish bond to the state in a form prescribed by the board and in an amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. No bond in excess of $20,000 is required under any one lease.

History: En. Sec. 4, Ch. 213, L. 1955; amd. Sec. 95, Ch. 428, L. 1973; R.C.M. 1947, 81-1728.

77-3-506. Disposition of leased land. In every lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under a lease provided for by this part.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(2).

77-3-507. Lessee to prevent waste. (1) Leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting the underground storage of natural gas shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled to store natural gas to the oil or gas sands or oil or gas bearing strata to the destruction or injury of oil or gas deposits.

(2) Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(3).

Cross-References

Cancellation and forfeiture of lease, 77-3-510.

77-3-508. Duration of lease. All leases issued under 77-3-501 may be granted for a period not exceeding 20 years, and the lessee has a preferential right to renew the lease for an additional period not exceeding 20 years, subject to any terms and conditions the board imposes.

History: En. Sec. 2, Ch. 213, L. 1955; amd. Sec. 94, Ch. 428, L. 1973; R.C.M. 1947, 81-1726.

77-3-509. Disposition of funds. All rentals collected for or under leases issued under 77-3-501 shall be paid to the department and credited in the same manner as rentals from oil and gas leases.

History: En. Sec. 6, Ch. 213, L. 1955; amd. Sec. 97, Ch. 428, L. 1973; R.C.M. 1947, 81-1730.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

Disposition of funds from oil and gas leases, 77-3-436.

77-3-510. Cancellation and forfeiture of lease. All leases granted under 77-3-501 shall provide for their forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-511. Termination and surrender of lease. The lessee may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not yet accrued.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(1).

77-3-512. Disposition of lessee's property upon termination of lease. Upon the termination for any cause of any lease issued under 77-3-501, the lessee has 6 months after the date of the termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon the premises.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(2).

CHAPTER 4

GEOTHERMAL AND HYDROELECTRIC RESOURCES

Part 1 — Geothermal Resources

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Part 2 — Hydroelectric Resources

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Part 1

Geothermal Resources

Part Cross-References

Educational impact statements, 20-1-208.

Major facility siting — applicability, 75-20-104.

Geothermal exploration — notification of Department of Natural Resources and Conservation, 75-20-1001.

Geothermal potential — bottom-hole temperatures — public information, 82-11-125.

77-4-101. Geothermal leases authorized. (1) The board may lease state-owned lands, including the beds of navigable streams and the beds of navigable bodies of water, to persons, associations, or corporations for prospecting, exploration, well construction, and the production of geothermal resources.

(2) The board may exercise business discretion in entering into leases under this part.

History: (1)En. 21-2601 by Sec. 1, Ch. 111, L. 1974; Sec. 81-2601, R.C.M. 1947; (2)En. 81-2604 by Sec. 4, Ch. 111, L. 1974; Sec. 81-2604, R.C.M. 1947; R.C.M. 1947, 81-2601, 81-2604(part).

Cross-References

Authorizations, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

Recreational use of streams, Title 23, ch. 2, part 3.

Powers and duties of Board, 77-1-202.

77-4-102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Geothermal development" means any of the operations or facilities necessary for the production of geothermal resources.

(2) "Geothermal resources" means the natural heat energy of the earth, including the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth, either present in, resulting from, created by, or which may be extracted from such natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-103. Rules. The board shall adopt rules governing the issuance of geothermal resource leases and the conduct of all geothermal operations. The board may also require the applicant for a geothermal lease to pay an application fee.

History: En. 81-2603 by Sec. 3, Ch. 111, L. 1974; R.C.M. 1947, 81-2603.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

77-4-104. Nature of geothermal resources. Geothermal resources are sui generis, being neither a mineral resource nor a water resource, but they are closely related to and possibly affecting and affected by water resources in many instances.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-105. State retention of geothermal resources. No right to seek, obtain, or use geothermal resources has passed or shall pass with any existing or future lease of state or school lands.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-106. Bonding requirements. The board may, at any time prior to the execution and delivery of a geothermal lease or at any time during the life of the lease, require a lessee to file with the department a bond to protect the rights of the state. The bond shall be in form and amount prescribed by the board. The board may at any time require new or additional bonds if the interests of the state will not adequately be protected by the bond previously filed.

History: En. 81-2606 by Sec. 6, Ch. 111, L. 1974; R.C.M. 1947, 81-2606.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Corporations as sureties, 33-26-101.

77-4-107. Compensation to surface lessee. The lessee of any geothermal lease shall compensate the surface lessee for any damage to the surface or leasehold interest caused as a result of the geothermal lease. The board may require the geothermal lessee to post a bond in an amount to be set by the board to insure the payment of damages to any surface lessee. If the surface lessee and the geothermal lessee disagree as to the reasonable amount of surface damage, damage shall be ascertained in the same manner as prescribed in 77-4-129.

History: En. 81-2607 by Sec. 7, Ch. 111, L. 1974; R.C.M. 1947, 81-2607.

77-4-108. Water rights in connection with geothermal development. If any geothermal development located on state land requires the utilization of water, the lessee may, at any time prior to 1 year before the expiration of his lease, make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, show the permanency of the water supply, and the estimated cost of utilizing such water resources. If the proposed plan meets with the approval of the board, permission shall be granted to the lessee to secure the desired water right for the land. Such right shall be secured in accordance with Title 85, chapter 2, and shall be filed in the name of the state. Existing water rights purchased by the geothermal lessee shall be the property of the lessee.

History: En. 81-2611 by Sec. 11, Ch. 111, L. 1974; R.C.M. 1947, 81-2611.

Cross-References

Water rights — generally, Title 85, ch. 2.

77-4-109. Conflicting leases. Where there are conflicting leases, including but not limited to geothermal, coal, mineral, and oil and gas leases, embracing the same land, the person who first was issued a lease shall be entitled to priority of rights; provided, however, that the exercise of this priority shall not interfere with actual production from the lease as determined by the board.

History: En. 81-2612 by Sec. 12, Ch. 111, L. 1974; R.C.M. 1947, 81-2612.

77-4-110 through 77-4-120 reserved.

77-4-121. Provisions of the lease. (1) A lease issued by the board gives the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In every geothermal resource lease granted there is reserved to this state the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby subject to the rights and privileges granted the lessee under the terms of the lease.

(3) Every lease shall specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time.

(4) Furthermore, the lease may contain other provisions the board and the lessee agree upon, provided that the additional terms are not inconsistent with this part.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-122. Duration of lease. The term of each lease shall be for a primary term of 10 years and for so long thereafter as geothermal resources in paying quantities are produced, provided that all conditions and terms of the lease are fully performed by the lessee.

History: **En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).**

77-4-123. Extension of lease. If geothermal resources are not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for geothermal resources, then the lease term shall be extended for so long as the drilling operations are diligently continued. If geothermal resources are recovered from any well drilled after the expiration of the primary term, the lease shall continue in force so long as geothermal resources in paying quantities are produced from the leased premises.

History: **En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).**

77-4-124. Operating agreements. Lessees may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on state lands, but no such operating agreements shall be binding upon the state until filed with the department and approved by the board. No drilling or operating agreement may affect the obligations of each individual leaseholder to the state.

History: **En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(4).**

77-4-125. Pooling agreements and unit operations. (1) Nothing contained in this part or other related laws shall prevent the board from entering into agreements for the pooling of acreage for unit operations for the production of geothermal resources and apportionment of geothermal royalties on an acreage or other equitable basis or from modifying the royalty provisions of existing leases and all subsequent leases in accordance with pooling agreements and unit plans of operation. No agreement may be entered into which changes the percentage of royalties to be paid to the state from the percentages fixed in its leases.

(2) Geothermal resources produced from any part of a unit in which state lands are included by virtue of a pooling agreement shall be considered to be produced from the state lands therein.

History: **En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(5), (6).**

77-4-126. Royalties and rentals. Geothermal leases shall be issued at an annual rental of not less than $1 per acre, payable in advance and/or a royalty which shall not be less than 10% of the amount or value of steam or other forms of heat or energy derived from the production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee and not more than 5% of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee.

History: **En. 81-2605 by Sec. 5, Ch. 111, L. 1974; R.C.M. 1947, 81-2605.**

77-4-127. Disposition of royalties and other receipts. (1) The department shall credit fees collected under geothermal leases to the general fund.

(2) All rentals, penalties, and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: En. 81-2610 by Sec. 10, Ch. 111, L. 1974; R.C.M. 1947, 81-2610.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-4-128. Permission for and disposition of improvements. (1) A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that such improvements are directly related to the purpose of the lease.

(2) Whenever another person becomes the geothermal lessee, he shall pay the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof.

(3) In determining the value of these improvements, the original cost, the present condition, and the suitableness of the improvements for the uses ordinarily made of geothermal resources shall be considered.

(4) The former lessee may, however, remove or dispose of the movable improvements from the land within 60 days from the expiration of his lease except for the well casing and other equipment necessary for the preservation of any geothermal well. If not removed within 60 days, improvements shall become the property of the state unless the board shall grant additional time for the removal thereof. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under 77-4-129, that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

History: En. 81-2608 by Sec. 8, Ch. 111, L. 1974; R.C.M. 1947, 81-2608.

77-4-129. Procedure to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties.

(2) If either party is dissatisfied with the valuation so fixed, he may within 10 days appeal from their decision to the department which shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the reexamination to the owner and the new lessee as justice may require. The value of the improvements shall be ascertained and fixed as provided in 77-4-128.

History: En. 81-2609 by Sec. 9, Ch. 111, L. 1974; R.C.M. 1947, 81-2609.

Part 2
Hydroelectric Resources

Part Cross-References

Educational impact statements, 20-1-208.

Rural cooperative utilities, Title 35, ch. 18.

Environmental policy, Title 75, ch. 1.

Major facility siting, Title 75, ch. 20.

Power generation negotiation process, 85-1-514.

Surface water and ground water, Title 85, ch. 2.

Environmental impact statement — water usage — fees, 85-2-124.

Water leasing program, 85-2-141.

Montana Dam Safety Act, Title 85, ch. 15.

77-4-201. Lease or license of power sites. It shall be unlawful to sell or advertise for sale state lands constituting power sites or part of power sites capable of developing hydroelectric energy in commercial quantities; but the board is hereby granted power and authority to issue lease or license to any person, corporation, or municipality for the development of such power sites and the distribution, use, and disposition of the electric energy generated thereon, as herein more specifically provided.

History: En. Sec. 2, Ch. 123, L. 1931; re-en. Sec. 1904.2, R.C.M. 1935; R.C.M. 1947, 81-1802.

Cross-References

Leases authorized, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

77-4-202. Power site defined. The words "power site" as used in this part shall mean not only the state-owned land on which the dam is constructed, but also each separate tract of such land which will become part of the reservoir and which in and of itself makes an essential contribution to the value of the power site as a whole of not less than 5% of the entire value of such power site.

History: En. Sec. 1, Ch. 123, L. 1931; re-en. Sec. 1904.1, R.C.M. 1935; R.C.M. 1947, 81-1801.

77-4-203. Restrictions and regulations. In issuing any lease or license under the provisions of this part, the board shall have the power and it shall be its duty to incorporate in the lease or license such reasonable restrictions and regulations as it finds necessary in order to protect the interest of the state and its people.

History: En. Sec. 6, Ch. 123, L. 1931; re-en. Sec. 1904.6, R.C.M. 1935; R.C.M. 1947, 81-1806.

Cross-References

Powers and duties of Board, 77-1-202.

77-4-204. Examination of power sites. Whenever an application in writing has been presented to the board for lease or license on a power site on state lands, the board shall make such preliminary examination as to the value of the power site, as to the plans of development submitted by the applicant, and of all other matters relating to the proposed development as it deems necessary for the proper disposition of the business.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-205. Notice of proposed lease or license. If these preliminary investigations and the offer made for lease or license are such that the board deems further proceedings on the application to be justified, it shall cause notice of the proposed lease or license to be published not less than once each week during not less than 6 weeks previous to the meeting at which further consideration will be given to the application in two newspapers of general circulation throughout the state, one of such newspapers to be published in the neighborhood of the location of the power site.

History: **En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).**

77-4-206. Meeting of board on proposed lease or license. (1) At this meeting all other applications which may have been received for lease or license to such power sites shall be duly considered together with the application originally filed.

(2) The board shall have the right to reject any or all bids.

(3) If, however, the board finds that any of the bids submitted offers to pay adequate rental for such power site, shows to the satisfaction of the board that it is capable of carrying out the proposed development and of rendering efficient service to the customers that will be served from such power development, and intends in good faith without any unnecessary delay to proceed with the development, then the board shall accept such bid. If more than one such acceptable bid is received, then the lease or license shall be awarded to the person, corporation, or municipality whose offer, considered in its totality, is the most advantageous to the state.

History: **En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).**

Cross-References

Full market value required, Art. X, sec. 11, Mont. Const.

77-4-207. Preference to bid of municipality. In case one of the applicants is a municipality, its bid shall have preference provided that it is in all respects as advantageous to the state as the bid which has been submitted by any person or corporation.

History: **En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).**

77-4-208. Rental for power sites. The rental to the state must be paid annually or semiannually and such rental shall not be less than the full market value of the estate or interest disposed of through the granting of the lease or license, such value to be carefully ascertained from all available sources.

History: **En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).**

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Full market value required, Art. X, sec. 11, Mont. Const.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-4-209. Duration of lease. The term of the lease shall not exceed 50 years.

History: **En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).**

Cross-References

Term not to exceed 50 years, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-4-210. Joint development with the United States. (1) If the state land constituting such power site is part of a larger power site owned or controlled by the government of the United States, then the board may grant a joint lease or license with the United States for the development of the power site and the distribution, use, and disposition of the electric energy generated at such power site under the laws of the United States and regulations issued pursuant thereto.

(2) Such lease or license may be granted for a term not exceeding 50 years.

(3) The share or percentage of ownership of the state in such joint power site shall be in proportion to the total contribution that the lands of the state make to the value of the entire power site. Before the share of the state in such power site is advertised for lease or license, the percentage of the state's share in the entire power site must be calculated and agreed upon between the state and the United States.

(4) The fee or compensation from time to time to be paid to the state under such lease or license shall be calculated on the basis of the state's share of ownership in the entire power site as calculated and agreed to; provided, however, that it shall not be less than the full market value of the estate or interest disposed of in such lands through the granting of the lease or license to be carefully ascertained from all available sources.

(5) Before such lease or license is issued, notice thereof must be given in the same manner as herein required for the issuance of a separate lease or license by the state.

History: En. Sec. 4, Ch. 123, L. 1931; re-en. Sec. 1904.4, R.C.M. 1935; R.C.M. 1947, 81-1804.

Cross-References

Full market value required, Art. X, sec. 11, Mont. Const.

77-4-211. Amortization of investment. (1) In all cases where the lease or license issued by the United States requires the amortization of the investment made in dams, machinery, equipment, and appurtenant works, such amortization requirement shall also apply to that portion of the investment representing the state's part or share in the power site so that the state will at all times retain its full share of ownership in the power site and in the dams, machinery, equipment, and appurtenant works.

(2) If the state lands constitute a separate power site wholly owned by the state and independently developed, the lease or license issued by the state may provide for the amortization of the capital invested in the dam, machinery, equipment, and appurtenant works, not including the distribution system, so that ultimately the state will become the owner of the power site including the dam, machinery, equipment, and appurtenant works, not including the distribution system.

History: En. Sec. 5, Ch. 123, L. 1931; re-en. Sec. 1904.5, R.C.M. 1935; R.C.M. 1947, 81-1805.

CHAPTER 5

TIMBER RESOURCES

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Part 1
State Forests

Part Cross-References

County forests, Title 7, ch. 8, part 26.

77-5-101. Classification of lands as state forests. All lands at present owned by the state and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant, or devise which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection are hereby classified and designated "state forests" and reserved for forest production and watershed protection.

History: En. Sec. 1, Ch. 179, L. 1925; re-en. Sec. 1830.1, R.C.M. 1935; amd. Sec. 1, Ch. 145, L. 1949; amd. Sec. 1, Ch. 167, L. 1951; amd. Sec. 97, Ch. 253, L. 1974; R.C.M. 1947, 81-1401.

Cross-References

Escheat — how disposed of, 72-14-206.

State to pay assessments on state lands within organized forest protection districts, 76-13-108.

77-5-102. Designation of state forests. The following state forest units are hereby established, primarily to secure through forestry management a continuous supply of timber and the performance of watershed covers:

(1) A state forest containing lands owned or hereafter acquired by the state, now comprising about 90,000 acres, situated in the watersheds of the Stillwater and Whitefish Rivers of Flathead and Lincoln Counties shall hereafter be known and designated as the "Stillwater State Forest".

(2) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 42,000 acres, situated in the Swan River watershed of Lake County shall hereafter be known and designated as the "Swan River State Forest".

(3) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 20,000 acres, situated in the Coal Creek watershed of the North Fork of the Flathead River shall hereafter be known and designated as the "Coal Creek State Forest".

(4) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 10,000 acres situated in the watersheds of Camp and Cameron Creeks of Ross Hole of Ravalli County shall hereafter be known and designated as the "Sula State Forest".

(5) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 14,628 acres, situated in the west half of township 25 north, range 26 west; and township 23 north, range 27 west; and west half of township 22 north, range 26 west; and township 21 north, range 26 west, except sections 4, 5, 6, 7, 8, and 18, in the Thompson River watershed of Sanders County shall hereafter be known and designated as the "Thompson River State Forest".

(6) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 18,076 acres, situated in townships 13, 14, and 15 north, range 14 west; and townships 13 and 16 north, range 15 west, Montana meridian, in the Clearwater River watershed of Missoula County shall hereafter be known and designated as the "Clearwater State Forest".

(7) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 8,245 acres, situated in township 14 north, ranges 7, 8, and 9 west; and township 13 north, ranges 8 and 9 west, Montana meridian, of the Blackfoot River watershed in Lewis and Clark County shall hereafter be known and designated as the "Lincoln State Forest".

History: En. Sec. 2, Ch. 179, L. 1925; re-en. Sec. 1830.2, R.C.M. 1935; R.C.M. 1947, 81-1402.

77-5-103. Role of department. (1) The department shall, under the direction and control of the board, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands.

(2) It shall do all acts required of it by the board, and under the direction of the board it has general charge of the timberlands of the state.

(3) It shall, under the supervision of the board, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement, and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush, and grass fires; enforce the laws pertaining to forest and brushcover lands and prosecute for any violation of those laws.

(4) The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training.

History: En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 1831, R.C.M. 1921; re-en. Sec. 1831, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1955; amd. Sec. 34, Ch. 93, L. 1969; amd. Sec. 102, Ch. 253, L. 1974; amd. Sec. 16, Ch. 397, L. 1977; R.C.M. 1947, 81-1411; amd. Sec. 1, Ch. 529, L. 1981.

Cross-References

Protection from fire — natural resources in general, Title 76, ch. 11, part 1.

Timber resources — Department of Natural Resources and Conservation, Title 76, ch. 13.

Classification of forest lands by Department of Natural Resources and Conservation, 76-13-107.

Transportation of coniferous trees — Department authority, 76-13-601.

Department defined, 77-1-101.

Management of state forests — Board, 77-1-204.

Department of Commerce to locate and maintain information on prime forestry sites, 90-1-102.

77-5-104. Firewardens. (1) The department shall appoint firewardens in the number and localities that it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties imposed:

(a) sheriffs;

(b) undersheriffs;

(c) deputy sheriffs;

(d) state fish, wildlife, and parks wardens and park rangers;

(e) the state fish, wildlife, and parks director;

(f) the director and employees of the department designated by the director;

(g) officers of organized forest protection districts;

(h) members of the Montana highway patrol;

(i) officers of the national park service residing in Montana;

(j) officers of the bureau of Indian affairs;

(k) county rural fire chiefs; and

(l) employees of the state fire prevention and investigation program provided for in 2-15-2005.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders.

History: En. Sec. 11, Ch. 147, L. 1909; re-en. Sec. 1833, R.C.M. 1921; re-en. Sec. 1833, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1955; amd. Sec. 103, Ch. 253, L. 1974; amd. Sec. 17, Ch. 17, L. 1977; R.C.M. 1947, 81-1412; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 4, Ch. 286, L. 1985; amd. Sec. 10, Ch. 662, L. 1991; amd. Sec. 1, Ch. 310, L. 1993; amd. Sec. 324, Ch. 418, L. 1995.

Cross-References

Protection of forest resources, Title 76, ch. 13, part 1.

Forest fire season, 76-13-102(6), 76-13-203.

Burning permits, 76-13-121.

Provision of fire protection services, Title 76, ch. 13, part 2.

Department defined, 77-1-101.

77-5-105. Powers of firewardens. (1) All firewardens have the power of peace officers to make arrests without warrants for violations in their presence of any state or federal forest laws, and a firewarden is not liable for civil action for trespass committed in the discharge of his duties. A firewarden who has information which shows, with reasonable certainty, that a person has violated any provision of those forest laws shall immediately take action against the offender by making complaint before the proper magistrate, or by information to the proper county attorney and shall obtain all possible evidence pertaining thereto.

(2) All firewardens shall have authority to call upon any able-bodied citizen between the ages of 18 and 50 years, resident in the vicinity, for assistance in putting out fires; and any such person who refuses to obey such summons, except for good and sufficient reason, is guilty of a misdemeanor and upon conviction shall be fined in a sum not less than $15 or more than $50 or imprisonment in the county jail not less than 1 or more than 30 days or both such fine and imprisonment. No citizen shall be called upon to fight fire a total of more than 5 days in one year.

History: (1)En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; Sec. 81-1413, R.C.M. 1947; (2)En. Sec. 13, Ch. 147, L. 1909; re-en. Sec. 1835, R.C.M. 1921; re-en. Sec. 1835; R.C.M. 1935; Sec. 81-1414, R.C.M. 1947; R.C.M. 1947, 81-1413(part), 81-1414.

Cross-References

Rural fire protection — county or district, Title 7, ch. 33, part 22.

State may recover fire suppression costs, 50-63-103.

Provisions for fire protection on private lands, Title 76, ch. 13, part 2.

77-5-106. Misconduct by paid firewarden. Failure on the part of a paid firewarden to comply with the duties prescribed in this chapter is a misdemeanor, punishable by a fine of not less than $20 or more than $1,000 or imprisonment in the county jail for not less than 10 days or more than 12 months or by both such fine and imprisonment. Upon his conviction, the district court wherein he is convicted shall immediately declare his office vacant and notify the proper appointing power thereof.

History: En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; R.C.M. 1947, 81-1413(part).

Cross-References

Vacancy for violation of official duties, 2-16-501.

Official misconduct — forfeiture of office, 45-7-401.

77-5-107 through 77-5-114 reserved.

77-5-115. Management of isolated forest lands — access. (1) To facilitate the management of isolated tracts of classified forest lands, the department may negotiate reciprocal access agreements, which may include easements. For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions that the board may impose.

(2) In granting access, the department is not required to analyze or consider the potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access.

History: En. Sec. 1, Ch. 419, L. 1995.

Part 2

Timber Sales and Removal

77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under any rules established by the board.

(2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency due to fire, insect, fungus, parasite, or blowdown or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any or all bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 1 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3).

History: En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; R.C.M. 1947, 81-1404(part); amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 139, L. 1983; amd. Sec. 1, Ch. 223, L. 1995.

Cross-References

Loggers' and logging camp cooks' liens, 71-3-601.

Declaration of insect infestation zone, 76-13-303.

Department defined, 77-1-101.

Permits without advertising, 77-5-212.

77-5-202. Agreement with purchaser — bond. (1) Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the approximate quantity to be cut by species, and the rate for each product of each species. The agreement shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling, and slash disposal and such other rules as in the discretion of the board are essential to the perpetuation of the state forests.

(2) (a) Except as provided in subsection (2)(b), as a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient sureties, to the state of Montana, in an amount equal to the potential loss to the state, as determined by the department.

(b) The bond required under this section must be in an amount equal to at least 5% of the estimated value of the timber sold.

History: (1)En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; Sec. 81-1404, R.C.M. 1947; (2)En. Sec. 5, Ch. 179, L. 1925; re-en. Sec. 1830.5, R.C.M. 1935; Sec. 81-1405, R.C.M. 1947; R.C.M. 1947, 81-1404(part), 81-1405; amd. Sec. 1, Ch. 373, L. 1989.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Surety bonds, 33-26-101.

Fire hazard reduction agreement and bond, 76-13-408.

Duty of purchaser to ensure compliance with fire hazard reduction, 76-13-409.

77-5-203. Breach of timber sale agreement. For breach of timber sale agreement, the department may suspend cutting or removal of the timber and take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages or it may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond.

History: En. Sec. 6, Ch. 179, L. 1925; re-en. Sec. 1830.6, R.C.M. 1935; amd. Sec. 99, Ch. 253, L. 1974; R.C.M. 1947, 81-1406; amd. Sec. 1, Ch. 529, L. 1981.

Cross-References

Attorney General — member of Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Attorney General — duties, 2-15-501.

Department defined, 77-1-101.

77-5-204. Sale of timber — fee for forest improvement. (1) The board may sell timber on state lands, at a price per 1,000 board feet, when appropriate, that, in the board's judgment, is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the value per 1,000 board feet, when appropriate, of all merchantable timber.

(4) In addition to the price of the timber established under subsection (1), the board may require a timber purchaser to pay a fee for forest improvement. Revenue from the fee must be deposited in the state special revenue fund to

the credit of the department and, as appropriated by the legislature, may be used only for:

(a) disposing of logging slash;

(b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

(c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and

(d) complying with legal requirements for timber harvesting.

History: En. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R.C.M. 1921; amd. Sec. 1, Ch. 132, L. 1933; re-en. Sec. 1872, R.C.M. 1935; amd. Sec. 219, Ch. 147, L. 1963; amd. Sec. 82, Ch. 428, L. 1973; R.C.M. 1947, 81-1601; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 446, L. 1993; amd. Sec. 2, Ch. 157, L. 1995.

Cross-References

Burning permits, 76-13-121.

Spark arresters required, 76-13-125.

Control of timber slash and debris, Title 76, ch. 13, part 4.

77-5-205. Approval or disapproval of sales. All sales of timber on state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).

77-5-206. Management of timber by department. (1) The department shall supervise all the management of timber before it is cut and secure the most complete utilization of all forest products consistent with the current forest management practices.

(2) It shall instruct and supervise the cruisers, forest wardens, and scalers in the conduct of their work and fix and establish the standard practice in timber sales administration.

(3) Records of converting factors, units of measure, and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale, and the name of the scaler.

(4) Where the volume of timber involved is not in excess of 1 million board feet log scale, the department may designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: En. Sec. 8, Ch. 179, L. 1925; re-en. Sec. 1830.8, R.C.M. 1935; amd. Sec. 1, Ch. 40, L. 1945; amd. Sec. 1, Ch. 219, L. 1955; amd. Sec. 1, Ch. 145, L. 1963; amd. Sec. 100, Ch. 253, L. 1974; R.C.M. 1947, 81-1408; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 110, L. 1991.

Cross-References

Transportation of coniferous trees — Department authority, 76-13-601.

Department defined, 77-1-101.

77-5-207. Salvage timber program. (1) The department shall establish a salvage timber program that provides for the timely salvage logging on state forests of dead or dying timber or timber that is threatened by insects, disease, fire, or windthrow. In managing the harvest of salvage timber, the department shall consider:

(a) the economic value of the timber to be salvaged;

(b) the cost of salvage efforts; and

(c) the long-term costs to all forest resources from insects, disease, or fire that otherwise might be controlled through salvage operations.

(2) The department shall, to the extent practicable, harvest dead and dying timber before there is substantial wood decay and value loss.

(3) The department may sell salvage timber pursuant to this part.

(4) The department's salvage timber program may not take precedence over the timely sale and harvest of green timber.

History: **En. Sec. 2, Ch. 285, L. 1993.**

77-5-208 through 77-5-210 reserved.

77-5-211. Free permit to remove timber. Permits may be issued free of charge for dead, down, or inferior timber in such quantities and under such restrictions and regulations as the board may approve for fuel and domestic purposes to residents and settlers of the state.

History: **En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).**

Cross-References

Coal mining permits for private use and for schools, 77-3-321.

77-5-212. Commercial permits for timber removal. (1) Permits may be issued to citizens of the state for commercial purposes at commercial rates without advertising under such restrictions and rules as the board may approve for timber in quantities of less than 100,000 feet board measure; and in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than 200,000 feet board measure.

(2) Repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

History: **En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).**

Cross-References

Standard timber sales, 77-5-201.

77-5-213. Permits for farm and ranch repair and development. Permits for cutting and removal of timber may be issued to farmers, ranchers, and prospectors with such restrictions and regulations as the board may approve for timber in quantities of 25,000 feet board measure or less when it is to be used for domestic purposes in the repair and development of the ranch or farm; provided, that not to exceed 25,000 feet board measure shall be granted in any one year to any one person. The rates of charge for such permits shall be fixed by the board.

History: **En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).**

Cross-References

Coal mining permits for private use and for schools, 77-3-321.

77-5-214 through 77-5-220 reserved.

77-5-221. Definition. As used in 77-5-222, 77-5-223, and this section, "annual sustainable yield" means the quantity of timber that can be harvested from forested state lands each year in accordance with all applicable state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds, and in compliance with water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5, taking into account the ability of state forests to generate replacement tree growth.

History: En. Sec. 1, Ch. 517, L. 1995.

77-5-222. Determination of annual sustainable yield. (1) The department, under the direction of the board, shall commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested state lands.

(2) Until the study required by subsection (1) is completed, the annual sustainable yield is considered to be a range of 45 million board feet to 55 million board feet.

History: En. Sec. 2, Ch. 517, L. 1995.

77-5-223. Annual sustainable yield as timber sale requirement — review. (1) The annual sustainable yield constitutes the annual timber sale requirement for the state timber sale program administered by the department. This annual requirement may be reduced proportionately by the amount of sustained income to the beneficiaries generated by site-specific alternate land uses approved by the board.

(2) After it is determined under 77-5-222, the annual sustainable yield must be reviewed and redetermined by the department, under the direction of the board at least once every 10 years.

History: En. Sec. 3, Ch. 517, L. 1995.

Cross-References

Revenue for state equalization aid, 20-9-343.

Part 3
Streamside Management Zones

Part Cross-References

Water Use, Title 85.

77-5-301. Findings and purpose. (1) The legislature finds that the streamside management zone:

(a) acts as an effective sediment filter to maintain water quality;

(b) provides shade to regulate stream temperature;

(c) supports diverse and productive aquatic and terrestrial riparian habitats;

(d) protects the stream channel and banks;

(e) provides large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and

(f) promotes floodplain stability.

(2) The legislature further finds that maintaining the integrity of forest streams is crucial to the quality and quantity of water available to Montanans for domestic, agricultural, industrial, and recreational use.

(3) The legislature further finds that forest streams are highly susceptible to impacts from land development and that in many cases forest practices in

streamside zones in Montana are causing excessive and unnecessary damage to the banks, beds, and protective vegetation of forest streams.

(4) The legislature further finds that, through careful management in the streamside zone, owners and operators can achieve timber harvest goals without sacrificing water quality or impairing the beneficial uses of the water.

(5) The purposes of this part are:

(a) to protect the legitimate public interest in the quality and quantity of forest waters;

(b) to provide for standards, oversight, rehabilitation, and penalties to ensure that forest practices are conducted in a manner that conserves the integrity of Montana's streamside zones;

(c) to provide guidelines for the management of wildlife habitat in streamside zones; and

(d) to allow operators necessary flexibility to use practices appropriate to site-specific conditions in the streamside management zone.

History: **En. Sec. 1, Ch. 608, L. 1991.**

77-5-302. Definitions. As used in this part, the following definitions apply:

(1) "Alternative practices" means forest practices that are:

(a) conducted in the streamside management zone and that are different from practices required by rules adopted under this part;

(b) designed for site-specific conditions encountered during a timber sale; and

(c) subject to department approval under 77-5-303.

(2) "Department" means the department of natural resources and conservation provided for in 2-15-3301.

(3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to the operation of a Christmas tree farm or nursery that do not involve new road construction.

(4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

(5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(8) "Streamside management zone" or "zone" means a stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone

encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(9) "Timber sale" means a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes.

History: En. Sec. 2, Ch. 608, L. 1991; amd. Sec. 1, Ch. 320, L. 1993; amd. Sec. 325, Ch. 418, L. 1995.

77-5-303. Standards for forest practices in streamside management zones. (1) The following practices are prohibited in a streamside management zone:

(a) broadcast burning;

(b) the operation of wheeled or tracked vehicles except on established roads;

(c) the forest practice of clearcutting;

(d) the construction of roads except when necessary to cross a stream or wetland;

(e) the handling, storage, application, or disposal of hazardous or toxic materials in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants;

(f) the side-casting of road material into a stream, wetland, or watercourse; and

(g) the deposit of slash in streams or other water bodies.

(2) The department shall publish and distribute the rules implementing the streamside management standards.

History: En. Sec. 3, Ch. 608, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Water quality, Title 75, ch. 5.

Aquatic ecosystem protections, Title 75, ch. 7.

Waste and litter control, Title 75, ch. 10.

77-5-304. Inspection — onsite consultation. (1) The department may inspect forest practices on any federal, state, or private land in this state to assess compliance with the provisions of this part and rules adopted pursuant to this part.

(2) The department may conduct an onsite consultation with an owner or operator to review harvest plans and watershed conditions. During the onsite consultation, the department may review and, if appropriate, approve the proposed use of alternative streamside management practices, as provided in 77-5-303.

History: En. Sec. 4, Ch. 608, L. 1991.

77-5-305. Responsibility for compliance — penalties — administrative orders. (1) (a) Except as provided in subsection (1)(b), it is the responsibility of the owner to ensure compliance with the provisions of this part and rules adopted pursuant to this part.

(b) If a written contract between an owner and an operator specifies that the operator is responsible for compliance with laws relating to forest practices, the operator is considered the responsible party for all enforcement actions taken by the department under this section.

(2) A person who violates a provision of this part, a rule adopted pursuant to this part, or an order issued under this section shall be subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(3) (a) When the department determines that an owner or operator has violated a provision of this part or a rule adopted pursuant to this part and has caused damage to watershed or wildlife resources, the department may serve an order requiring the person responsible for the conduct of forest practices to undertake necessary site rehabilitation within a reasonable period of time stated in the order. The order must specify the nature of the violation and the damage or unsatisfactory condition resulting from the violation.

(b) The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Service by mail is complete on the date of mailing.

(c) If, after a hearing, the department finds that a violation has occurred and the watershed or wildlife habitat damage warrants site rehabilitation, it shall affirm or modify the order previously issued. If the department finds that a violation has not occurred or that site rehabilitation is not warranted, it shall rescind the order.

(d) The department may include in an order a provision that the owner or operator immediately cease causing further damage and take immediate action to alleviate the damage or to prevent future damage. The department may institute an action for injunctive relief under Title 27, chapter 19, if the recipient of the order does not comply with it.

(4) Subsection (3) does not prevent the department from seeking voluntary compliance and site rehabilitation through warning, conference, or any other appropriate means.

(5) All fines and penalties levied under this section must be deposited in the state general fund.

History: En. Sec. 5, Ch. 608, L. 1991; amd. Sec. 60, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 inserted (5) relating to fines and penalties deposited in state general fund. Amendment effective July 1, 1997.

77-5-306. Repealed. Sec. 66, Ch. 422, L. 1997.

History: En. Sec. 6, Ch. 608, L. 1991.

77-5-307. Rulemaking. The department shall adopt rules:

(1) implementing each of the management standards provided in 77-5-303;

(2) providing specific direction necessary for owners and operators to understand and comply with the management standards, including additional definition of the streamside management zone and the forest practices permissible within the zone;

(3) providing alternative practices for the standards provided for in 77-5-303; and

(4) regulating the harvest of timber in streamside management zones.

History: En. Sec. 7, Ch. 608, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 4
Community and Urban Forestry Program

Part Cross-References

County Board of Park Commissioners and county park districts, Title 7, ch. 16, parts 23 and 24.

Municipal authority for planting and protection of trees, 7-16-4102.

77-5-401. Title — purpose. This part may be cited as the "Community and Urban Forestry Act". The purpose of the act is to:

(1) encourage the planting, maintenance, and management of trees in municipalities and counties;

(2) maximize the potential of trees and vegetative cover in improving the quality of the environment;

(3) encourage the coordination of state and local agency activities and maximize citizen participation in the development and implementation of community and urban forestry-related programs;

(4) foster healthy economic activity for the state's community and urban forestry-related businesses through cooperative and supportive contracts with the private business sector;

(5) facilitate the creation of jobs related to community and urban forestry activities, including opportunities for retraining and employing displaced timber resource workers; and

(6) provide meaningful voluntary opportunities for the state's citizens and organizations interested in community and urban forestry activities.

History: En. Sec. 1, Ch. 321, L. 1993.

77-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(2) "Department" means the department of natural resources and conservation provided for in 2-15-3301.

(3) "Local government" means a city, town, county, consolidated city-county, or other political subdivision of the state.

History: En. Sec. 2, Ch. 321, L. 1993; amd. Sec. 326, Ch. 418, L. 1995.

77-5-403. Authority — rulemaking. (1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose set forth in 77-5-401. The department may assist local governments in establishing and maintaining community and urban forestry programs and in encouraging persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist local governments in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint an advisory committee to assist the department in establishing and carrying out a program in community and urban forestry.

(4) The department may adopt rules to implement this part.

History: En. Sec. 3, Ch. 321, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

77-5-404. Special revenue account — donations. (1) There is an account in the state special revenue fund. The department shall deposit in the account money received from gifts, grants, bequests, or endowments from public or private sources, and the funds must be used to carry out the provisions of this part. The money in the account may be spent in accordance with a legislative appropriation.

(2) The department may accept donations of labor, material, seedlings, and equipment from public or private sources for the purpose of carrying out the provisions of this part.

History: En. Sec. 4, Ch. 321, L. 1993.

CHAPTER 6

AGRICULTURAL, GRAZING, AND OTHER SURFACE LEASES

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Part 1
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Mining lease — bond to protect rights of prior surface lessee, 77-3-120.

Coal lease — care taken to protect rights of prior surface lessees, 77-3-304.

Oil and gas lease — care taken to protect rights of surface lessees, 77-3-401.

Geothermal leases — compensation for damage to surface lessee, 77-4-107.

77-6-101. Statement of policy. It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised from time to time but not less than once during the term of every lease by competent appraisers. The purpose of such appraisals shall be to determine the rental value of agricultural lands and town and city lots, the general condition of the lands, and the carrying capacity of grazing lands.

History: En. Sec. 1, Ch. 207, L. 1945; amd. Sec. 1, Ch. 260, L. 1963; R.C.M. 1947, 81-401.

Cross-References

Market value for interest in state lands, Art. X, sec. 11, Mont. Const.

Appraisal of grazing land, 77-6-201.

77-6-102. Surface leases authorized. Under the general direction and control of the board, the department shall lease all agricultural and grazing lands and all town lots, city lots, and lands valuable for commercial development open to leasing upon proper application.

History: **En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part); amd. Sec. 2, Ch. 488, L. 1985.**

Cross-References

Authorization, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials); 77-1-204.

77-6-103. Lease of state land to United States for military purposes authorized. The board, when it considers it in the public interest, may lease to the United States for military purposes any state land, whether such land was received by the state through federal land grants or whether such land consists of so-called "mortgage lands", on such terms and conditions as it considers necessary to promote the public welfare and protect the interests of the state. Rental shall be payable at the end of each year of the lease.

History: **En. Sec. 1, Ch. 122, L. 1943; amd. Sec. 25, Ch. 428, L. 1973; R.C.M. 1947, 81-424.**

77-6-104. Renumbered 77-1-209 by Code Commissioner, 1983.

77-6-105. Criteria for determining land to be included in single lease. (1) All lands shall be leased in as compact bodies as possible, and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply or in a form that will make it more difficult to lease the remaining state lands in the section in which they are located.

(2) There may be included under one lease tracts of lands embracing more than one section.

History: **(1)En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; Sec. 81-413, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-407(part), 81-413(part).**

77-6-106. Repealed. Sec. 6, Ch. 488, L. 1985.

History: **En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(4).**

77-6-107. Leases of land wanted for both agricultural and grazing use. If there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the department at the earliest practical opportunity and a determination made, based on its findings, of the highest and best use which can be made of the land or portions thereof. Any lease of the land subsequent to the applications or bids shall be such as to return to the state revenue commensurate with the highest and best use.

History: **En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; R.C.M. 1947, 81-413(part).**

77-6-108. Who may lease. No person may lease state lands, except one who is the head of a family, unless he has attained the age of 18 years. Any such person and any association, company, or corporation authorized to hold lands under lease may lease state lands and may hold more than one lease to state lands.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part).

77-6-109. Duration of lease. Except as provided in 77-6-116, a lease for agricultural or grazing lands may not be for a period other than 5 or 10 years. Leases for city lots, town lots, and lands valuable for commercial development may not exceed 40 years.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part); amd. Sec. 3, Ch. 488, L. 1985; amd. Sec. 2, Ch. 555, L. 1989.

Cross-References

Grazing and agricultural leases not to exceed 10 years, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

77-6-110. Lease expiration dates. Except as provided in 77-6-116, all leases for agricultural lands, grazing lands issued after February 27, 1939, no matter on what date issued, shall expire on February 28 within 10 years from the date on which the lease becomes effective.

History: En. Sec. 24, Ch. 60, L. 1927; re-en. Sec. 1805.24, R.C.M. 1935; amd. Sec. 3, Ch. 65, L. 1939; amd. Sec. 4, Ch. 135, L. 1974; R.C.M. 1947, 81-408; amd. Sec. 3, Ch. 555, L. 1989.

77-6-111. Terminated. Section 2, Ch. 304, L. 1977.

History: En. 81-407.1 by Sec. 1, Ch. 304, L. 1977; R.C.M. 1947, 81-407.1.

77-6-112. Liens on crops and improvements. (1) The state has a lien upon all crops growing upon any of its lands and upon the crops after they have been separated from the lands for any rentals and penalties due or delinquent under the lease on the lands or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and all other improvements and is prior and superior to all other liens, except threshermen's liens and seed liens specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated.

(2) Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or the department may seize and sell, either at a private or public sale, upon giving notice for not less than 3 days of the sale, sufficient of those crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops

and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city, or other lots.

History: En. Sec. 31, Ch. 60, L. 1927; re-en. Sec. 1805.31, R.C.M. 1935; amd. Sec. 20, Ch. 428, L. 1973; R.C.M. 1947, 81-418.

Cross-References

Liens — generally, Title 71, ch. 3.

Farm laborers' liens, Title 71, ch. 3, part 4.

Construction liens, Title 71, ch. 3, part 5.

Lien for hail insurance, 71-3-711.

Lien for spraying or dusting crops, Title 71, ch. 3, part 9.

77-6-113. Lease conditions — cancellation. (1) It shall be a condition of all leases of agricultural or grazing state lands that:

(a) in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds and planting crops with a view of securing the greatest yields of good quality; and

(b) in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved shall be canceled by the department, subject to the appeal procedure provided in 77-6-211.

History: En. Sec. 10, Ch. 207, L. 1945; amd. Sec. 4, Ch. 254, L. 1947; amd. Sec. 3, Ch. 27, L. 1971; amd. Sec. 18, Ch. 428, L. 1973; R.C.M. 1947, 81-415.

Cross-References

Renewal leases, 77-6-205.

Effect of competitive bidding, 77-6-508.

77-6-114. Lessee responsible for assessments and taxes for weed control. It shall be the duty of the board in leasing any agricultural state land to provide in such lease that the lessee of lands so leased lying within the boundaries of any noxious weed control district shall assume and pay all assessments and taxes levied by the board of county commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the county treasurer in the same manner as regular personal property taxes are collected. All such state lessees shall be required under the terms of such lease to pay such assessment and tax levy at the same time and manner as other regular personal taxes are paid.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 30, Ch. 607, L. 1985.

Cross-References

County weed control, Title 7, ch. 22, part 21.

Weed control, Title 80, ch. 7, part 7.

Noxious weed management funding, Title 80, ch. 7, part 8.

77-6-115. Acquisition of water right by lessee. (1) The lessee of state lands may at any time prior to 1 year before the expiration of his lease make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, shall show how much of the land can be irrigated, the permanency of the water supply, and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission shall be granted the lessee to secure the desired water right for the land and to place the same under irrigation.

(2) If such water right becomes a permanent and valuable improvement, then in case of the sale or lease of the lands to other parties, the former lessee shall be entitled to receive compensation in the amount of the reasonable value thereof, as in the case of other improvements, from the new lessee or the purchaser.

(3) These provisions shall not be so construed as to make the state liable to the lessee for the payment of the cost or value of such irrigation improvements.

History: En. Sec. 33, Ch. 60, L. 1927; re-en. Sec. 1805.33, R.C.M. 1935; R.C.M. 1947, 81-420.

Cross-References

Compensation for improvements, Title 77, ch. 6, part 3.

Water rights — generally, Title 85, ch. 2.

77-6-116. Voluntary termination of lease to allow concurrence with federal conservation reserve program — competitive bidding required. (1) A lessee of state land who wishes to enter the state land in the federal conservation reserve program may request voluntary termination of the remainder of the lease prior to scheduled expiration in order to seek a renewal lease that will run concurrently with the federal program. The lessee shall apply for voluntary termination to the department on a form prescribed by the department. The form must specify:

(a) the name of the lessee and a designation of the leased land for which voluntary termination is sought;

(b) the scheduled termination date of the lease; and

(c) the term of eligibility of the land under the federal conservation reserve program.

(2) Upon receipt of a proper application, the department shall terminate the remainder of the lease. When a request for voluntary termination is granted, the department shall fulfill the notification requirements of 77-6-204, and the lease is subject to the same competitive bidding process as renewal leases under 77-6-205. However, the lessee requesting voluntary termination retains the preference right allowed under 77-6-205.

(3) If a lease renewal is granted pursuant to 77-6-205 to a lessee who has requested voluntary termination under this section, the term of the renewal lease must coincide with the term of eligibility under the federal conservation reserve program.

History: En. Sec. 1, Ch. 555, L. 1989.

Part 2

Leasing Procedure

77-6-201. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity and make and preserve records thereof in its office and from time to time reexamine these lands as to their animal-unit-month carrying capacity so as to keep the records thereof in its office reasonably accurate.

(2) In appraising these grazing lands the following factors shall be taken into consideration:

(a) inventory of the forage resources—kind, amount, and location of vegetation;

(b) accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability;

(c) condition of soils—the erosion situation;

(d) other and related resources such as timber, game animals, need for watershed protection;

(e) record of needed improvements and facilities—fuel and stock water, revegetation, rodent control, trails, fences, and the like;

(f) pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity;

(g) carrying capacity set for similar land in a state grazing district in which the land is situated.

History: En. Sec. 4, Ch. 207, L. 1945; amd. Sec. 11, Ch. 428, L. 1973; R.C.M. 1947, 81-404.

Cross-References

Citizens entitled to inspect and copy public records, 2-6-102.

Annual grazing rental based on "animal units", 77-6-507.

77-6-202. Lease by competitive bidding — full market value required. When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract must be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in 77-6-205(2). The board may not accept a bid that is below full market value. If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease may be issued, at a rental rate to be determined by the board, to the first bidder who is willing to pay the board-determined rate whose name is selected through a random selection process from all bidders on the tract.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(3); amd. Sec. 3, Ch. 586, L. 1993; amd. Sec. 288, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 at end of third sentence, after "market value", deleted "determined by taking into account recommendations of the state land board advisory council"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Effect of competitive bidding, 77-6-508.

77-6-203. Bid deposit. (1) A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to 20% of the annual rental bid in the case of grazing land and an amount equal to $1 per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis.

(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department

shall return the deposits of the unsuccessful bona fide bidders. If the department finds a bid has been submitted that is frivolous, forged, or a bad faith bid or a bid submitted for purposes of harassment, the deposit is forfeited. The department shall make a reasonable attempt to notify the bidder in writing of the forfeiture and reasons therefor.

(3) If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited.

(4) The department shall credit all forfeited deposits to the interest and income account of the proper trust.

History: En. Sec. 1, Ch. 185, L. 1963; amd. Sec. 29, Ch. 428, L. 1973; amd. Sec. 1, Ch. 133, L. 1974; R.C.M. 1947, 81-436; amd. Sec. 37, Ch. 281, L. 1983; amd. Sec. 1, Ch. 290, L. 1985.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341(1)(c).

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

Conservation easement for sale of leased cabin or home sites or city or town lots, 77-2-319.

77-6-204. Notification of termination of lease. When a lease expires, is canceled, or is voluntarily terminated under 77-6-116, the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during or immediately preceding the term of the expired, canceled, or terminated lease.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part); amd. Sec. 4, Ch. 555, L. 1989.

Cross-References

Lease expiration dates — cancellation, 77-6-110, 77-6-210.

77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, or land valuable for commercial development who has paid all rentals due the state or who has voluntarily terminated a lease under 77-6-116 is entitled to have the lease renewed for a period not to exceed the maximum lease period provided in 77-6-109 at any time within 30 days prior to its expiration or within 30 days following voluntary termination if no other applications for lease of the land have been received 30 days prior to the expiration of the lease or within 30 days following voluntary termination. The renewal must be at the full market rental rate established by the board for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. Except as provided in 77-6-212, if other applications have been received, the holder of the lease has the preference right to lease the land covered by the former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section must be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, the lessee may request an administrative hearing. The request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest. The department shall grant the request for a hearing if it determines that the statement

indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of the land, would cause damage to the tract, or would impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and inform the lessee and competitive bidder of the reduction. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) A renewal lease may be canceled pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by the lessee that occurred during the previous lease term but no more than 3 years prior to the date on which the notice of cancellation required by 77-6-211 is issued. Cancellation procedures instituted but not completed before renewal are applicable to the renewal lease.

(4) A renewal lease may be voluntarily terminated pursuant to 77-6-116.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(1), (2); amd. Sec. 1, Ch. 73, L. 1983; amd. Sec. 4, Ch. 488, L. 1985; amd. Sec. 1, Ch. 687, L. 1985; amd. Sec. 1, Ch. 383, L. 1987; amd. Sec. 5, Ch. 555, L. 1989; amd. Sec. 1, Ch. 43, L. 1991; amd. Sec. 4, Ch. 586, L. 1993.

Cross-References

Lease bidding, 77-6-202.

77-6-206. Withdrawal of lands from leasing. Notwithstanding the foregoing provisions, the board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state. Bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the department.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(4).

77-6-207. Form of lease — bond optional. The general form of lease to state lands shall be prescribed by the board, and no changes in the form for these leases may be made without the approval of the board. All leases shall be issued in duplicate, one copy shall be mailed to the lessee, and one copy shall be preserved by the department. Unless the board decides otherwise, these leases shall be issued without bonds, but the board may require a bond and prescribe the form and conditions thereof whenever it considers it necessary.

History: En. Sec. 29, Ch. 60, L. 1927; re-en. Sec. 1805.29, R.C.M. 1935; amd. Sec. 19, Ch. 428, L. 1973; R.C.M. 1947, 81-416.

77-6-208. Assignment of leases — subleasing — loss of preference right. (1) Leases to state lands may be assigned on blanks prescribed by the department, but an assignment is not binding on the state unless the assignment is filed with the department and approved by it and payment made of the assignment fee under 77-1-302.

(2) Preference must always be given to the applicant who wants the land for the applicant's own individual use, so that the full advantage coming from

the leasing and use of the lands may reach those who actually till the soil and so that they are not compelled to pay a higher rental than that due the state.

(3) (a) If a lessee, other than a holder of a commercial lease, subleases state lands on terms less advantageous to the sublessee than the terms given by the state, the department shall cancel the lease, subject to the appeal procedure provided in 77-6-211.

(b) If a lessee subleases state lands without filing a copy of the sublease with the department and without receiving the department's approval, the department may cancel the lease, subject to the appeal procedure provided in 77-6-211.

(c) Upon approval by the department, a commercial leaseholder may sublease state land on terms less advantageous to the sublessee than the terms given to the lessee by the state. However, the department may adjust the lease rate to require that the lessee pay the state a portion of what the sublessee pays to the lessee.

(4) The subleasing of state land may result in loss of the preference right to renew the lease as provided in 77-6-212.

(5) An assignment or series of assignments may not be made to avoid the loss of the preference right under 77-6-212.

History: En. Sec. 32, Ch. 60, L. 1927; re-en. Sec. 1805.32, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965; amd. Sec. 3, Ch. 22, L. 1971; amd. Sec. 4, Ch. 27, L. 1971; amd. Sec. 21, Ch. 428, L. 1973; R.C.M. 1947, 81-419; amd. Sec. 2, Ch. 383, L. 1987; amd. Sec. 1, Ch. 96, L. 1993.

Cross-References

Renewal leases, 77-6-205.

Pledge or mortgage of leasehold interest, 77-6-401.

77-6-209. Change from grazing lease to agricultural lease. (1) When land is leased for grazing purposes and the lessee desires to cultivate any part of the land, he shall, before doing any such cultivation, make application to the department stating how much land he desires to cultivate and showing the location in the section of the land and agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in 77-6-211, or require the lessee to pay twice the regular agricultural rental on the land so cultivated in addition to the grazing rental.

(2) The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; re-en. Sec. 1805.28, R.C.M. 1935; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963; amd. Sec. 2, Ch. 27, L. 1971; amd. Sec. 17, Ch. 428, L. 1973; R.C.M. 1947, 81-414.

77-6-210. Cancellation of leases. (1) The department may cancel a lease for any of the following causes:

(a) fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued;

(b) subleasing state land contrary to the provisions of 77-6-212;

(c) using the land for other purposes than those authorized by the lease;

(d) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the unit; however, when a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in cancellation of the lease unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to the violation of this subsection;

(e) for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state.

(2) Cancellation of a lease under this section does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(1); amd. Sec. 3, Ch. 383, L. 1987; amd. Sec. 2, Ch. 319, L. 1989.

Cross-References

Renewal leases, 77-6-205.

Unit of land defined, 77-6-221.

Date when rental due — cancellation for nonpayment, 77-6-506.

77-6-211. Procedure to cancel lease — appeal. (1) When the department cancels a lease pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210, it shall immediately notify the lessee by certified mail of the cancellation and the reasons therefor. The date of cancellation is 15 days from the date the notice is received by the lessee.

(2) The lessee has 15 days after the receipt of the notice to file with the department a notice of appeal for a hearing before the board. If notice of appeal is filed, the lease remains in effect until the decision of the board. Within 10 days after notice of appeal has been filed, the department shall set the time and place of hearing and shall so notify the lessee. The board may, after 10 days' notice to the lessee, change the time and place of hearing.

(3) Under rules it adopts, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof is on the lessee to show why the lease should not be canceled. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for re-leasing as provided by law. If the board finds that the terms of the lease have been violated but in its judgment the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three times the annual rental against the lessee.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(2), (3).

Cross-References

Open hearings required, 2-3-203.

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Notification of interested parties of termination, 77-6-204.

77-6-212. Loss of preference right — cancellation of lease — subleasing — pasturing agreements. (1) Except as provided in subsections (3) and (4), a lessee of state land classed as agricultural or grazing land may not exercise the preference right provided in 77-6-205 if he subleases the land for more than 2 years in the term of the lease.

(2) The department shall cancel a lease of state agricultural or grazing land if the lessee subleases the land for more than 3 years during the term of the lease, unless the sublease is made between members of a family as provided in subsection (3).

(3) A lessee under subsection (1) or (2) may sublease the land for a period of not more than 5 years without losing the preference right or the lease to state land if, during the term of the lease, the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(4) The lessee does not lose the preference right or right to lease because of subleasing as provided under this section if:

(a) the sublease is one-third or less acres of the lease; or

(b) the sublease is considered to be a pasturing agreement and is approved in writing by the department prior to the initiation of the agreement.

(5) For purposes of this section, a sublease may not be considered a pasturing agreement unless the lessee personally retains management and physical control of the land and livestock. "Management" means but is not limited to:

(a) providing all costs for improvements, land maintenance, and range renovation, if range renovation is approved by the department;

(b) making all decisions regarding rotation or other placement of livestock on state land;

(c) making all decisions regarding turn-in and turn-out dates of the livestock on state land; and

(d) making all decisions regarding proper range management, including placement of water, fencing, and salt.

(6) A lessee of state land classified as agricultural or grazing land shall lose the preference right provided in 77-6-205 upon conviction of a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the unit. When a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in loss of lease preference unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to the violation of this subsection.

History: En. Sec. 4, Ch. 383, L. 1987; amd. Sec. 3, Ch. 319, L. 1989.

Cross-References

Unit of land defined, 77-6-221.

77-6-213 through 77-6-220 reserved.

77-6-221. Unit of land defined. As used in this part, "unit" means privately deeded land or land leased from the state, or a combination of the two, that is under the control of one operator, manager, or family.

History: En. Sec. 1, Ch. 319, L. 1989.

Part 3

Improvements

77-6-301. Improvements authorized. A lessee of state lands may place upon the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, improvement of the land itself, irrigation ditches, sheds, wells, reservoirs, and similar improvements.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

Cross-References

Water rights as improvement, 77-6-115.

77-6-302. Compensation for improvements — actual costs. (1) When another person becomes the lessee of the lands, the person shall pay to the former lessee the reasonable value of these improvements at the time the new lessee takes possession. The reasonable value may not be less than the full market value of the improvements.

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in 77-6-306.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part); amd. Sec. 5, Ch. 586, L. 1993.

Cross-References

Lease expiration dates, 77-6-110.

77-6-303. Determination of compensation. (1) In determining the value of these improvements, consideration shall be given to their original cost, their present condition, their suitableness for the uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee.

(2) However, if any of the improvements consists of breaking (meaning the original plowing of the land) and 1 year's crops have been raised on the land after the breaking, the compensation for the breaking may not exceed $2.50 per acre, and if two or more crops have been raised on the land after the breaking, the breaking shall not be considered as an improvement to the land.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-304. Removal of improvements. The former lessee may, however, remove the movable improvements on the land and dispose of them to parties other than the lessee. If he fails to remove the improvements from the land within 60 days from the date of the expiration of his lease, all of the improvements become the property of the state unless the department for good cause grants additional time for their removal.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-305. Settlement regarding improvements prerequisite to issuance of new lease. Before a lease is issued to the new lessee, the lessee shall show that the former lessee has been paid the value of the improvements pursuant to 77-6-302 or as determined under 77-6-306 or that the former lessee elects to remove the improvements.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part); amd. Sec. 6, Ch. 586, L. 1993.

77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on state lands desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements pursuant to 77-6-302, the value must be ascertained and fixed by three arbitrators, one of whom is appointed by the owner of the improvements, one by the new lessee, and the third by the two appointed arbitrators. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director has the same duties and powers as if appointed by one of the parties. The value of the improvements must be ascertained and fixed pursuant to 77-6-302.

(2) The reasonable compensation that the arbitrators may fix for their services must be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the department. The department shall examine the records pertaining to the costs of the improvements, and except as provided in subsection (4), its decision is final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in the proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court of Lewis and Clark County for judicial review of the decision.

History: En. Sec. 22, Ch. 60, L. 1927; re-en. Sec. 1805.22, R.C.M. 1935; amd. Sec. 4, Ch. 260, L. 1963; Sec. 81-406, R.C.M. 1947; redes. 81-421.1 and amd. by Sec. 13, Ch. 428, L. 1973; R.C.M. 1947, 81-421.1; amd. Sec. 1, Ch. 38, L. 1983; amd. Sec. 7, Ch. 586, L. 1993; amd. Sec. 327, Ch. 418, L. 1995.

Cross-References

Arbitration, Title 27, ch. 5.

Part 4
Pledges and Mortgages of Leasehold Interests

77-6-401. Pledge or mortgage of leasehold interest in state lands. Any lessee of a grazing or agricultural lease of state lands is hereby authorized to pledge said lease or mortgage his leasehold interest in said lands.

History: En. Sec. 1, Ch. 52, L. 1947; R.C.M. 1947, 81-425.

Cross-References

Mortgages of real property, Title 71, ch. 1, part 2.

Pledges — generally, Title 71, ch. 2.

Assignment of leases, 77-6-208.

77-6-402. Filing with department required. The pledgee of such lease or the mortgagee of such leasehold interest shall, within 30 days after receipt of the pledge agreement or mortgage, file it or a certified copy thereof with the department.

History: En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965; amd. Sec. 4, Ch. 22, L. 1971; amd. Sec. 26, Ch. 428, L. 1973; R.C.M. 1947, 81-426.

77-6-403. Transfer of lease. (1) Except as provided in subsection (2), upon due proof that a person has acquired through foreclosure or conveyance the pledgor's or mortgagor's leasehold interest, the board shall transfer the lease to that person, who is subject to all the conditions, obligations, and liabilities and entitled to all the rights and privileges provided for in the lease. To authorize transfer of a lease, a decree of foreclosure must specifically refer to the lease or the leased premises, but neither the board nor the department is required to be named as a party to the action. The plaintiff shall, however, file a copy of the complaint with the department at the time it is filed with the court.

(2) Nothing in this section may be construed to require the board to complete the transfer of a lease to an assignee whom the board considers unqualified as a lessee of state lands.

History: En. Sec. 3, Ch. 52, L. 1947; R.C.M. 1947, 81-427; amd. Sec. 1, Ch. 679, L. 1991.

Cross-References

Liens on crops and improvements, 77-6-112.

77-6-404. Proof of termination of pledge or mortgage to be filed. The lessee of any grazing or agricultural lease of or leasehold interest in state lands which is pledged or mortgaged as provided in this part shall, within 30 days after payment of the indebtedness secured thereby or within 30 days after the pledge agreement is terminated or the leasehold interest is released from the mortgage, file with the department proof of that fact.

History: En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965; amd. Sec. 5, Ch. 22, L. 1971; amd. Sec. 27, Ch. 428, L. 1973; R.C.M. 1947, 81-428.

Part 5
Rental Provisions

77-6-501. Agricultural leases. (1) As to agricultural lands, all leases except lease renewals upon which the lessee has made improvements at the lessee's expense, as provided in subsection (3), must be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops such as but not limited to potatoes and sugar beets or for high production cost methods when these methods would result in more income to the state. The board may not delegate the authority to approve special crop share rentals.

(2) Except in the case of cash lease renewals under subsection (3), if it is in the best interests of the state, the department may authorize a lease upon other basis than crop share, but in these cases the rental must at least equal the value of the usual landlord's share prevailing in the district under similar circumstances, and the department shall set forth in the records the conditions of the case and the rental to be charged.

(3) In cases in which the lessee has made substantial improvements for irrigation purposes to the lease at the lessee's own expense, the department shall authorize a cash lease renewal at not less than $15 an acre on the portion of the lease that has been improved.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part); amd. Sec. 1, Ch. 54, L. 1985; amd. Sec. 1, Ch. 168, L. 1993.

Cross-References

Effect of competitive bidding, 77-6-508.

77-6-502. Grazing leases. (1) The rental rate for leasing all state grazing lands must attain full market value based upon the appraised animal-unit-month carrying capacity of the land as provided in 77-6-507.

(2) If the board raises the rentals for state grazing lands during the term of any leases of grazing land that are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases must provide for the increase.

History: (1)En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; Sec. 81-402, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-402(part), 81-407(part); amd. Sec. 8, Ch. 586, L. 1993.

Cross-References

Leases by competitive bidding, 77-6-202.

77-6-503. Leases of city lots, town lots, and commercial property. As to town lots, city lots, and land valuable for commercial development owned by the state, the fair rental value thereof shall be determined from time to time by the department with the approval of the board and a record made thereof, and such town or city property or land valuable for commercial development may be leased at its current appraised rental value for terms not to exceed 40 years.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2,

Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part); amd. Sec. 5, Ch. 488, L. 1985.

77-6-504. Lease rentals for part year. Lease rentals for agricultural or grazing state land, where the lease term begins after February 28 in the initial year of the lease, shall be for the whole of the yearly rate for the fractional part of the initial year if the lease term begins prior to July 1 in such fractional part of year, and for one-half the yearly rate for such fractional part of the year if the lease term begins after June 30 in the initial year and prior to the succeeding February 28.

History: En. Sec. 7, Ch. 207, L. 1945; R.C.M. 1947, 81-410.

Cross-References

Expiration date — leases, 77-6-110.

77-6-505. No reduction for summer fallow. No credit or reduction or refund in rental shall be allowed any lessee of agricultural or grazing state land on account of summer fallow.

History: En. Sec. 8, Ch. 207, L. 1945; R.C.M. 1947, 81-411.

77-6-506. Date when rental due — penalty — cancellation for nonpayment. (1) For grazing leases, the grazing portion of leases containing both agricultural and grazing land, and agricultural leases not based on a crop share, the rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1. If the rental is not paid before March 1, a $25 penalty shall be imposed on the lessee. If the full rental and the $25 penalty are not paid by April 1, the entire lease is canceled.

(2) For agricultural leases and the agricultural portion of leases containing both grazing and agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, the rental is due in cash on or before November 15 of the year in which the crop is harvested. If the rental is not paid on or before November 15 of the year of crop harvest, a $25 penalty shall be imposed on the lessee. If the full rental and the $25 penalty are not paid on or before December 31 of the year in which the crop is harvested, the entire lease is canceled. The department may extend the deadline in writing. If the lessee does not make the rental payment by the date of extension, the entire lease is canceled. Any rental payment made after November 15 of the year in which the crop is harvested, including payment made after an extension of the deadline, must include the $25 penalty.

(3) For all state land leases and licenses other than those described in subsections (1) and (2), the department shall impose a $25 penalty for failure to make a rental payment by any deadline established by statute, rule, or in the lease or license.

(4) At least 2 weeks prior to the final deadline for payment under subsection (1) or (2), the department shall send by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is canceled if payment and the $25 penalty are not received by the final deadline. The notice shall be sent to the lessee at the address given in the lease.

(5) When a lease is canceled under subsection (1) or (2), the department shall notify the lessee of the cancellation by letter at the address given in the lease. The land is then open for lease to applicants.

(6) The penalties collected pursuant to this section must be deposited into the same trust account as the rentals from the state land to which the penalties apply.

History: En. Sec. 26, Ch. 60, L. 1927; re-en. Sec. 1805.26, R.C.M. 1935; amd. Sec. 1, Ch. 197, L. 1943; amd. Sec. 2, Ch. 22, L. 1971; amd. Sec. 15, Ch. 428, L. 1973; R.C.M. 1947, 81-412; amd. Sec. 1, Ch. 473, L. 1985; amd. Sec. 1, Ch. 187, L. 1989; amd. Sec. 1, Ch. 140, L. 1991.

Cross-References

Lease to United States for military purposes authorized, 77-6-103.

Bid deposit and forfeiture requirements, 77-6-203.

Notification of interested parties when lease canceled, 77-6-204.

Cancellation of lease for other reasons, 77-6-210.

77-6-507. Formula for fixing annual rental. (1) In this section:

(a) "animal unit" means one cow, one horse, five sheep, or five goats;

(b) "animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for 1 month.

(2) The board shall establish the per annum rental rate per section of all grazing lands that are the property of the state by multiplying a factor established by the board pursuant to 77-6-502 times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(3) The carrying capacity of the land to be used in the above formula must be in accordance with the determinations of the department made under 77-6-201.

(4) The average price per pound of beef cattle on the farm in Montana must be taken from statistics published by the United States department of agriculture current at the time of computation of the rental or from other reliable sources current at that time.

(5) In establishing the rental rate described in subsection (2), the board shall consider applicable elements that include but are not limited to those set forth in 77-1-106.

History: En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963; amd. Sec. 1, Ch. 97, L. 1973; amd. Sec. 28, Ch. 428, L. 1973; R.C.M. 1947, 81-433; amd. Sec. 1, Ch. 259, L. 1979; amd. Sec. 1, Ch. 38, L. 1991; amd. Sec. 12, Ch. 586, L. 1993.

Cross-References

Appraisal of grazing land, 77-6-201.

77-6-508. Effect of competitive bidding. Whenever competitive bidding establishes a rental price higher than the rental price established by the board, the board in leasing the lands shall incorporate in the lease conservation requirements as are considered necessary for the protection of the grass or forage crops.

History: En. Sec. 3, Ch. 190, L. 1949; R.C.M. 1947, 81-434; amd. Sec. 9, Ch. 586, L. 1993.

Cross-References

Competitive bidding — when required, 77-6-202.

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